

CONSOLIDATED SUMMARY JUDGMENT EXHIBITS

EXHIBIT 3

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO: 1:18-cv-08048
- - - - - X
PAUL IACOVACCI,
Plaintiff,
-against-
BREVET HOLDINGS, LLC, et al,
Defendants.
- - - - - X
Virtual Deposition
New York, New York

October 1, 2021
8:30 a.m.

REMOTE ZOOM DEPOSITION of JOHNNY
LAN, in the above-entitled action, held at
the above time and place, pursuant to
Federal Rules of Civil Procedures
30(b)(6), taken before Tracie Shand, a
shorthand reporter and Notary Public
within and for the State of New York.

1 Johnny Lan

2 A P P E A R A N C E S:

3

CYRULNIK FATTARUSO, LLP

4 Attorneys for Plaintiff

55 Broadway, 3rd Floor

5 New York, New York 10006

BY: IAN DUMAIN, ESQ.

6 VIA ZOOM

7

WEISS & WEISS, LLC

8 Co-Counsel for Plaintiffs

50 Main Street, 10th Floor

9 White Plains, New York 10606

BY: SCOTT A. WEISS, ESQ.

10 VIA ZOOM

11

12 REED SMITH, LLP

Attorneys for Defendants

13 225 Fifth Avenue

Pittsburgh, PA 15222

14 BY: COLIN UNDERWOOD, ESQ.

VIA ZOOM

15

16

ALSO PRESENT:

17 Paul Fattaruso, Esq.

Traci Rea, Esq.

18 Evelyn Fruchter, Esq.

Marcelo Rivera, Videographer

19 Jason Cyrulnik, Esq.

Yalkin Demirkaya, Esq.

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22

23

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25

Johnny Lan

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND
AGREED by and between the attorneys for
the respective parties herein, that
filing, sealing and certification be and
the same are hereby waived.

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
the form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may be
signed and sworn to before any officer
authorized to administer an oath, with the
same force and effect as if signed and
sworn to before The Court.

Johnny Lan

WHEREAS, due to the circumstances created by the COVID-19 pandemic, the parties desire to enter into a stipulation that will allow certain depositions to proceed remotely and minimize travel and social contact;

IT IS HEREBY STIPULATED AND AGREED, by the parties hereto, through their undersigned counsel, subject to the approval of the Court, as follows:

1. The parties agree that depositions of agreed-upon deponents may be conducted remotely. Pursuant Federal Rule of Civil Procedure 30(b)(4) and subject to the provisions of Paragraph 5 of this Stipulation, each such remote deposition is taken in the jurisdiction and at the place where the deponent is to answer questions.

2. The party that noticed the deposition will provide the deponent, the deponent's counsel, and counsel to all other parties with access credentials to an electronic remote deposition platform

1 Johnny Lan

2 that will allow all participants in the
3 deposition to hear and be heard, and to
4 See and be seen, by all other
5 participants.

6 3. The parties agree that the
7 deponent in each remote deposition shall
8 be video recorded. Each person attending
9 a remote deposition should strive to (i)
10 ensure their environment is free from
11 noise and distractions and (ii) connect to
12 the videoconferencing platform using a
13 Case 1:18-cv-08048-MKV-DCF Document 234
14 Filed 09/24/21 Page 1 of 72 stable and
15 reliable internet connection with
16 sufficient bandwidth to avoid any
17 disconnection or disruptions during the
18 depositions.

19 4. The parties agree that (an)
20 employee(s) from the court reporting,
21 video conference, and remote deposition
22 service provider (the "Court Reporting
23 Service Provider") may attend each remote
24 deposition to video record the deposition
25 and troubleshoot any technological issues

1 Johnny Lan

2 that may arise.

3 5. The parties agree that the
4 court reporter is an "officer" as defined
5 by Federal Rule of Civil Procedure
6 28(a)(2) and shall be permitted to
7 administer the oath to the deponent via
8 Video conference. The parties agree not
9 to challenge the validity of any oath
10 administered by the court reporter, even
11 if the court reporter is not a notary
12 public in the state where the deponent
13 Resides.

14 6. Remote depositions shall be
15 transcribed by stenographic means
16 consistent with the requirements of
17 Federal Rule of Civil Procedure 30(b)(3),
18 and the court reporter's transcript
19 shall constitute the official record.
20 The videographer will simultaneously video
21 record the deposition and preserve the
22 video recording. The court reporter may
23 be given a copy of the video recording and
24 may review the video recording to improve
25 the accuracy of any written transcript.

Johnny Lan

7. The parties agree that remote depositions may be used at a hearing or trial to the same extent that an in-person deposition may be used at a hearing or trial, and the parties agree not to object to the use of the video recording and/or transcript on the basis that the deposition was taken remotely. The parties reserve all other objections to the use of any deposition testimony at trial.

8. The deponent, court reporter, and counsel for the parties will each participate in the videoconference deposition remotely, except that counsel representing the deponent may

Case 1:18-cv-08048-MKV-DCF Document 234
Filed 09/24/21 Page 2 of 73 appear in person with the deponent. Should counsel representing the deponent elect to appear in person with the deponent, that counsel shall appear on the videoconferencing platform when the hear or understand the deponent.

Johnny Lan

13. Counsel shall endeavor to ensure that every deponent has technology sufficient to appear for a remote deposition (e.g., a webcam and computer or telephone audio), and bandwidth sufficient to sustain the remote deposition. Counsel for each deponent shall consult with the deponent at least reasonably in advance of the deposition to confirm the deponent has the Required technology. If the deponent does not have the required technology, counsel for the deponent shall endeavor to supply the required technology to the deponent prior to the deposition.

14. To the extent that there are problems or issues with the technology that interfere with the completion of the deposition, the deposition will be completed the next day on which The deponent and counsel for the parties are reasonably available, and the parties will jointly request that the Court extend any deadlines, if necessary, to allow

1 Johnny Lan

2 completion of the depositions.

3 15. The parties agree that this
4 Stipulation and [Proposed] Order applies
5 to remote depositions of parties and
6 non-parties under Federal Rule of Civil
7 Procedure 45 and shall work in
8 A collaborative manner in scheduling
9 remote depositions of non-parties. The
10 party noticing any non-party deposition
11 shall provide this Stipulation and
12 [Proposed] Order to counsel for any
13 Non-party at a reasonable time before the
14 date of the deposition.

15 16. The parties agree that any
16 of the following methods for administering
17 exhibits may be employed during a remote
18 deposition:

19 I. Counsel may choose to mail
20 physical copies of documents that may be
21 used during the deposition to the
22 deponent, the deponent's counsel, the
23 other parties' counsel, and the court
24 reporter. In that event, noticing counsel
25 shall so inform the Case

Johnny Lan

1:18-cv-08048-MKV-DCF Document 234 Filed
09/24/21 Page 4 of 75 deponent's counsel,
the other parties' counsel, and the court
reporter prior to mailing the documents
and shall provide tracking information for
the package. Such documents shall be
delivered by 12:00 pm ET the business day
before the deposition. The deponent,
deponent's counsel, the other parties'
counsel, and the court reporter shall
confirm receipt of the package by
electronic mail to counsel noticing the
deposition. If physical copies are
mailed, every recipient of a mailed
package shall keep the package sealed
until the deposition begins and shall only
Unseal the package on the record, on
video, and during the deposition when
Directed to do so by the counsel taking
the deposition.

Ii. Counsel may choose to send a
compressed.zip file of the documents that
may be used during the deposition via
electronic mail or secure FTP site to the

1 Johnny Lan

2 deponent, the deponent's counsel, the
3 other parties' counsel, and the court
4 reporter. The .zip file shall be
5 delivered by 12:00 pm ET the business day
6 before the deposition. Deponent's
7 counsel, the other parties' counsel, and
8 the court reporter shall confirm receipt
9 of the .zip file by electronic mail to
10 counsel noticing the
11 Deposition. The .zip file shall be
12 password protected, and counsel taking the
13 Deposition shall supply the password via
14 electronic mail immediately prior to the
15 Commencement of the deposition. Every
16 recipient of a .zip file shall not open
17 the .zip file or any document contained
18 therein until directed to do so by the
19 counsel taking the deposition after the
20 deposition begins.

21 Iii. Counsel may choose to share
22 exhibits as they are introduced at the
23 deposition by using exhibit or screen
24 sharing technology or the deposition
25 videoconference platform's "chat" feature

1 Johnny Lan
2 provided that a complete electronic copy
3 of the exhibit Case 1:18-cv-08048-MKV-DCF
4 Document 234 Filed 09/24/21 Page 5 of 76
5 is made available at that time through the
6 deposition platform or through reasonably
7 accessible means (including by e-mail).

8 17. All deponents receiving
9 documents before or during a deposition
10 pursuant to paragraph 16.i shall return
11 the documents to the counsel who sent them
12 originally, within 2 business days
13 following the completion of the deposition
14 and shall not retain them in any manner.
15 Counsel noticing the deposition shall
16 include a pre-paid return shipping label
17 in any package of documents mailed to a
18 deponent. In the alternative, the
19 deponent may certify that any copies of
20 exhibits that were provided in advance of
21 the deposition have been destroyed.

22 18. Counsel for the parties may
23 keep any document or exhibit used during
24 the deposition, in accordance with the
25 Stipulated Protective Order (Dkt. 101).

1 Johnny Lan

2 19. Counsel noticing the deposition
3 shall provide any counsel for third-party
4 witnesses with a copy of the Parties'
5 Stipulated Protective Order. Counsel for
6 third-party witnesses may keep any
7 document used during the deposition in
8 accordance with the Stipulated Protective
9 Order.

10 20. A remote deposition shall
11 satisfy the parties' obligations to make
12 the deponent available for deposition and
13 the deponent's obligations to appear for a
14 deposition to the same extent as if the
15 deposition had been conducted in person.

16 21. The parties may modify these
17 procedures as appropriate by mutual
18 agreement and reserve their rights to seek
19 reasonable modifications of these
20 procedures as appropriate in individual
21 instances.

22 VIDEOGRAPHER: Good morning,
23 we're going on the record at 8:42 a.m.
24 on October 1, 2021. This deposition
25 is being taken remotely of Mr. Johnny

1 Johnny Lan

2 Lan in the matter Iacovacci versus
3 Brevet Holdings, LLC, et al.

4 My name is Marcelo Rivera from
5 Veritext Legal Solutions. I'm the
6 videographer. The court reporter is
7 Tracie Shand in association with
8 Veritext Legal Solutions.

9 I'm not related to any party in
10 the action, nor, am I financially
11 interested in the outcome.

12 Counsel and all present remotely
13 will now state their appearances and
14 affiliations for the record. If there
15 are any objections to proceeding,
16 please, state them at the time of your
17 appearance, beginning with the
18 noticing attorney.

19 MR. DUMAIN: My name is Ian
20 Dumain. I'm with Cyrulnik Fattaruso.
21 I represent the plaintiff, Paul
22 Iacovacci. With me is my colleague,
23 Evelyn Fruchter.

24 MR. WEISS: My name is Scott
25 Weiss, Weiss & Weiss, LLC, co-counsel

1 Johnny Lan
2 to Cyrulnik Fattaruso. And I also
3 represent the plaintiff, Paul
4 Iacovacci.

5 MR. UNDERWOOD: Colin Underwood
6 from Reed Smith, representing the
7 defendants in this action, the Brevet
8 entities, and the witness, Johnny Lan.
9 And with me in the room is my
10 colleague Ruhi, R-U-H-I, Behal,
11 B-E-H-A-L. Also, on the line is Traci
12 Rea, R-E-A, of our Pittsburgh office.

13 VIDEOGRAPHER: Will the court
14 reporter, please, swear in the
15 witness.

16 J O H N N Y L A N, the witness herein,
17 having been first duly sworn by a Notary
18 Public of the State of New York, was
19 examined and testified as follows via Zoom:

20 EXAMINATION BY

21 MR. DUMAIN:

22 THE REPORTER: State your name
23 for the record, please.

24 THE WITNESS: Johnny Lan.

25 THE REPORTER: State your

1 Johnny Lan

2 address for the record, please.

3 THE WITNESS: [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 Q. Good morning, Mr. Lan. How are
7 you?

8 A. Good. Yourself?

9 Q. Okay. Thank you.

10 As you heard, my name is Ian
11 Dumain. I represent Paul Iacovacci who is
12 the plaintiff in this matter.

13 If at any point you can't hear
14 me, or you would like me to speak up, or
15 repeat myself, or speak more quickly, or
16 more slowly, I'll try.

17 Before we get started this
18 morning, have you setup or your counsel
19 setup your Exhibit Share software that
20 will allow you to see the exhibits that
21 are put in front of you?

22 A. Yes, we have.

23 Q. Mr. Lan, have you ever given a
24 deposition before?

25 A. Yes.

1 Johnny Lan

2 Q. How many times?

3 A. Once before this.

4 Q. When was that?

5 A. I'm sorry?

6 Q. When was that?

7 A. I can't recall the exact date.

8 It was a few years ago.

9 Q. Was it in connection with work
10 or was it a personal matter?

11 A. It was a personal matter.

12 Q. Were you a party to a lawsuit or
13 were you a witness in a lawsuit?

14 A. I was a witness.

15 Q. You're probably familiar with
16 this process, but just as a reminder, the
17 way this works, of course, I'm going to
18 ask you some questions. As I said, if you
19 can't hear me, you should just ask me to
20 repeat; okay?

21 A. Okay.

22 Q. After I ask your question,
23 another attorney, your attorney in this
24 case, may state an objection for the
25 record. He may say something like

1 Johnny Lan

2 objection to the form of the question.

3 Unless, Mr. Underwood expressly directs
4 you not to answer, you should go ahead and
5 answer the question; do you understand?

6 A. Yes.

7 Q. As you know, the court reporter,
8 Tracie, is typing everything that we're
9 saying to make a record. So, it's
10 important that you give verbal responses,
11 not head nods, and that we don't speak
12 over each other; understand?

13 A. Yes.

14 Q. Finally, if you would like a
15 break at any point, please, let me know.
16 We'll try to take regular breaks. The
17 only thing I ask, if there's a question
18 pending, you answer the pending question
19 before you ask for a break; okay?

20 A. Yes.

21 Q. Is there any reason you're aware
22 of that you would not be able to provide
23 competent testimony today?

24 A. No.

25 THE REPORTER: I think, he

1 Johnny Lan

2 froze.

3 VIDEOGRAPHER: Yes.

4 MR. DUMAIN: Could you repeat
5 that answer, I apologize?

6 A. To which question?

7 Q. Whether there was anything that
8 would prevent you from giving competent
9 testimony today?

10 A. No.

11 Q. Great.

12 Because this is a remote
13 deposition, I just want to ask you a
14 couple of questions about your
15 surroundings.

16 Where are you located?

17 A. In my attorney's office.

18 Q. That's the New York office of
19 Reed Smith?

20 A. Yes.

21 Q. Can you just tell us who's in
22 the room with you?

23 A. My attorney, Colin Underwood,
24 and Ruhi Behal.

25 Q. Are there any documents related

1 Johnny Lan

2 to the case in the room with you?

3 A. Not that I'm aware of.

4 Q. You didn't bring any documents
5 related to the case with you today,
6 correct?

7 A. No.

8 Q. Aside from the computer in front
9 of you, are there any other electronic
10 devices in the room?

11 A. Yes.

12 Q. Okay. There are phones, I
13 gather?

14 A. Yes.

15 Q. All right.

16 Can you agree that while we're
17 on the record you will not check your
18 phone or any other electronic device,
19 aside from the Exhibit Share program we're
20 focused on?

21 A. Yes.

22 Q. Terrific. Thanks.

23 Mr. Lan, will you again state
24 your full name?

25 A. Johnny Lan.

1 Johnny Lan

2 Q. Again, state your address for
3 the record, please?

4 A. [REDACTED]
5 [REDACTED]

6 Q. You're represented by Mr.
7 Underwood at Reed Smith, correct?

8 A. Yes.

9 Q. That's as a witness in this
10 case, correct?

11 A. Yes.

12 Q. Let me state it differently.
13 You understand, sir, that you're
14 a defendant in this case, correct?

15 A. Yes.

16 Q. Is Reed Smith the attorneys that
17 are defending you in this action?

18 A. Yes.

19 Q. Who is paying for Reed Smith's
20 time?

21 A. I believe, my employer.

22 Q. Are you paying for Reed Smith's
23 time?

24 A. No.

25 Q. Mr. Lan, have you spoken to

1 Johnny Lan

2 anyone about today's deposition, aside
3 from your lawyers?

4 A. Can you repeat the question?

5 Q. Yes.

6 Aside from your lawyers, have
7 you spoken with anyone about today's
8 deposition?

9 A. Can you define spoken about?

10 Q. Sure.

11 Let's do it this way, who,
12 besides the people in the room, know that
13 you are giving a deposition in this case?

14 A. I believe, the internal counsel
15 at Brevet.

16 Q. Anyone else?

17 A. Perhaps, the other members of
18 Brevet.

19 Q. What's the name of the internal
20 counsel at Brevet?

21 A. Mei Li Dasilvavint.

22 MR. UNDERWOOD: I believe, she's
23 actually joined the proceeding here.

24 She's the party representative. If
25 you look at the list of participants,

1 Johnny Lan

2 she would be listed there.

3 Q. Aside from Ms. Dasilvavint, have
4 you spoken with anyone about giving this
5 deposition today, anyone from Brevet?

6 A. Not that I recall.

7 Q. Mr. Lan, what did you do to
8 prepare for your deposition?

9 A. I spoke with my attorneys.

10 Q. Did you look at any documents?

11 A. "At any documents," did you say?

12 Q. Yes.

13 Did you look at any documents to
14 prepare for your deposition today?

15 A. Yes.

16 Q. Did any of those documents
17 refresh your recollection about any of the
18 matters at issue in this case?

19 A. Generally, no.

20 Q. Aside from the deposition that
21 we've spoken about a few moments ago have
22 you ever given sworn testimony in any
23 proceeding?

24 A. Not that I can recall at this
25 time.

1 Johnny Lan

2 MR. DUMAIN: We're going to mark
3 as Lan Exhibit 1 the Rule 30(b)(6)
4 notice in this case, which should pop
5 up in Exhibit Share momentarily, as I
6 understand it.

7 (Whereupon, Plaintiff's Exhibit
8 1, Rule 30(b)(6) notice was marked,
9 for identification, as of this date.)

10 Q. You should see it now.

11 Are you looking at the document,
12 Mr. Lan?

13 A. Yes. This is a notice of
14 deposition.

15 Q. Have you ever seen this document
16 before?

17 A. Sitting here today, I can't
18 recall if I've seen or read through the
19 documents.

20 Q. If you could look, flip to page
21 11 of the PDF. I'm going to have you
22 review briefly topics 19 through 25. When
23 you've had a chance to look at them, let
24 me know.

25 A. Okay.

1 Johnny Lan

2 Q. Have you made it through 19
3 through 25, Mr. Lan?

4 A. Just about.

5 Q. Okay.

6 A. Okay.

7 Q. Do you understand that you have
8 been designated by at least one of the
9 Brevet entities to give testimony related
10 to these topics, 19 through 25?

11 A. Yes.

12 Which entities?

13 Q. I think, Brevet Capital
14 Management, but your counsel will clarify
15 if I'm getting that wrong, I hope.

16 MR. UNDERWOOD: That's correct.

17 Q. Let me put it to you more
18 squarely.

19 You understand that you have
20 been designated to give testimony on
21 behalf of Brevet Capital Management
22 related to topics 19 through 25?

23 A. Yes.

24 Q. Are you prepared to give
25 testimony on those topics?

1 Johnny Lan

2 A. Yes.

3 Q. When we speak about them
4 specifically I'll ask you this question
5 again, but, generally, what did you do to
6 prepare to give testimony on behalf of
7 Brevet Capital Management on these topics?

8 A. Generally, I spoke with my
9 attorneys.

10 Q. Did you speak with anyone other
11 than your attorneys?

12 A. No.

13 Q. Did you review any documents
14 related to these topics?

15 A. Give me one second, let me just
16 review.

17 Yes.

18 Q. What documents did you review in
19 preparation to give testimony on these
20 topics?

21 MR. UNDERWOOD: I'm going to
22 instruct the witness not to answer the
23 question.

24 MR. DUMAIN: On what grounds?

25 MR. UNDERWOOD: Attorney/client

1 Johnny Lan
2 privilege in the work product
3 protection.

4 To the extent that the witness
5 is testifying in his personal
6 capacity, he's already testified that
7 the documents he reviewed didn't
8 refresh his recollection.

9 To the extent that we showed him
10 anything to prepare him to make sure
11 he could address the 30(b)(6) topics,
12 it's not a refreshing recollection
13 context in which you're entitled to
14 talk to him about the documents he
15 reviewed. I believe, it's covered by
16 the protection.

17 MR. DUMAIN: I think, we can
18 solve it this way.

19 Q. Mr. Lan, independent of any
20 documents your attorneys may have showed
21 you to prepare for your 30(b)(6)
22 testimony, did you review any other
23 documents in preparation to give testimony
24 on behalf of Brevet Capital Management?

25 A. No. Not that I can recall.

1 Johnny Lan

2 Q. Thank you.

3 Mr. Lan, you understand that
4 we're here today in connection with claims
5 brought by Paul Iacovacci against various
6 Brevet entities and several individuals,
7 including, yourself, correct?

8 A. Yes.

9 Q. Do you know Paul Iacovacci?

10 A. Yes.

11 Q. Who is Paul Iacovacci?

12 A. He was a former colleague at
13 Brevet.

14 Q. Do you recall what position he
15 held at Brevet?

16 A. No, I can't recall, you know,
17 his exact position or title.

18 Q. What was your relationship with
19 him when he worked at Brevet?

20 A. Could you elaborate on what you
21 mean?

22 Q. Sure.

23 Was Mr. Iacovacci your superior?

24 MR. UNDERWOOD: Object to the
25 form of the question.

1 Johnny Lan

2 MR. DUMAIN: Let me withdraw it.

3 Q. Did you report to Mr. Iacovacci?

4 A. Not directly.

5 Q. Did you report to Mr. Iacovacci
6 indirectly?

7 A. In a sense that he was a senior
8 member of the firm.

9 Q. As you understood it, in the
10 seniority hierarchy of the firm, where was
11 Mr. Iacovacci?

12 A. Sitting here today, I don't know
13 if I can give you an exact layout or
14 hierarchy.

15 Q. Do you have a general
16 recollection of where Mr. Iacovacci sat in
17 the hierarchy of Brevet?

18 MR. UNDERWOOD: Object to the
19 form of the question.

20 A. No. Again, I'm -- I don't think
21 I can answer your question.

22 Q. Mr. Lan, on or about October 18,
23 2016, did you access Mr. Iacovacci's home
24 computer without notice to Mr. Iacovacci
25 and download files?

1 Johnny Lan

2 MR. UNDERWOOD: Object to the
3 form of the question.

4 A. I disagree with the premises of
5 that question.

6 I was concerned that it was
7 Brevet's computer.

8 MR. DUMAIN: Tracie, could you,
9 please, read back the question?

10 Let me state it a different way
11 so we're not going to quibble about
12 who owned what.

13 Q. On or around October 18, 2016,
14 did you access a computer that was in Mr.
15 Iacovacci's home and download files
16 without notice to Mr. Iacovacci?

17 A. Yes.

18 Q. Did anyone tell you to do it?

19 A. Yes.

20 Q. Who told you to do it?

21 A. Mark Callahan.

22 Q. Do you recall what Mr. Callahan
23 said?

24 A. I generally recall Mark Callahan
25 instructing me to make a backup copy of

1 Johnny Lan

2 the Brevet related information on the
3 computer.

4 Q. Did Mr. Callahan instruct you to
5 do that without informing Mr. Iacovacci
6 that you would be doing it?

7 A. Not that I can recall.

8 Q. Do you recall asking
9 Mr. Callahan whether he should inform Mr.
10 Iacovacci that you would be doing this?

11 A. I do not recall him saying that
12 at this time.

13 Q. At the time that Mr. Callahan
14 gave you this instruction, did you express
15 to him any concern about the legality of
16 what you were about to do?

17 A. Again, not that I can recall at
18 this time.

19 Q. Did you seek any legal advice
20 before you accessed the computer in Mr.
21 Iacovacci's home and downloaded the files
22 without notice to Mr. Iacovacci?

23 A. No.

24 Q. Do you recall thinking about the
25 legality of it one way or the other?

1 Johnny Lan

2 A. I do not recall at this time.

3 Q. Do you regret having accessed
4 the computer at Mr. Iacovacci's home
5 without notice to Mr. Iacovacci and
6 downloading those files?

7 MR. UNDERWOOD: Object to the
8 form of the question.

9 A. I do not recall thinking about
10 that -- you know, what you were just
11 talking about.

12 Q. I'm asking you, as you sit here
13 today, do you regret having done it?

14 A. No.

15 Q. When he gave you this
16 instruction, were you face to face?

17 A. I believe, we were.

18 Q. Where did he give you this
19 instruction?

20 A. The best as I can recall, it was
21 in the Brevet offices at the time.

22 Q. What time of day were you given
23 this instruction?

24 A. Sitting here today, I couldn't
25 remember the exact time.

1 Johnny Lan

2 Q. Did you frequently work late
3 into the evenings in 2016?

4 A. Yes.

5 Q. Were you frequently in the
6 office late into the evenings in 2016?

7 A. Again, you know, given that it
8 was a long time ago, I couldn't tell you
9 for sure, but, yes, I generally -- I've
10 worked late throughout my tenure with the
11 company.

12 Q. Mr. Lan, if you could take a
13 look, again, at the deposition notice.
14 Just scroll back up to the very top.

15 That's not going to do it,
16 unfortunately -- it will do, actually.

17 Yes, please, scroll to the top.
18 Let me know when you're there, please.

19 A. Yes.

20 Q. Do you see in the first
21 paragraph on the first page a list of
22 Brevet entities?

23 A. Yes.

24 Q. Are you an employee of any of
25 these entities?

1 Johnny Lan

2 A. Do you mean at the current time?

3 Q. Let's start with the current
4 time.

5 Are you now an employee of any
6 of these entities?

7 A. No.

8 Q. Have you ever been an employee
9 of any of these entities?

10 A. Yes.

11 Q. Which of these entities have you
12 been an employee of?

13 A. I believe, Brevet Holdings.

14 Q. What is the business of Brevet
15 Holdings?

16 A. Can you elaborate on what you're
17 looking for, in terms of what is the
18 business?

19 It's a little vague.

20 Q. What does Brevet Holdings do?

21 A. I'm not an expert in, you know,
22 what all the different entities and what
23 their specific purpose or function is.

24 Q. I should be clear. I hope it's
25 clear, this isn't a trick.

1 Johnny Lan

2 I just wonder, if you know,
3 generally, what Brevet Holdings does?

4 A. Yes.

5 Q. Generally, what does it do?

6 A. It is an investment management
7 firm.

8 Q. What types of investments does
9 it manage?

10 A. I'm not sure I'm at liberty to
11 state.

12 Q. Why don't you think you can say
13 what types of investments Brevet manages?

14 A. You know, because my
15 understanding is, some of that is
16 proprietary, confidential information.

17 Q. There's a protective order in
18 this case, and your counsel will have the
19 opportunity to designate portions of this
20 transcript confidential.

21 So, unless, Mr. Underwood is
22 directing you not to answer, I would ask
23 that you answer the question.

24 MR. UNDERWOOD: Ian, was your
25 question -- sorry.

1 Johnny Lan

2 I thought the original question
3 was about Brevet Holdings. I think,
4 maybe, when you restated it you asked
5 about Brevet.

6 Are you asking specifically
7 about Brevet Holdings or are you
8 asking about the Brevet organization?

9 MR. DUMAIN: My recollection is
10 that I asked about Brevet Holdings.
11 He said the business was that of an
12 investment manager. And I said what
13 types of investments.

14 MR. UNDERWOOD: I think, in your
15 most recent question you just said
16 Brevet. I was just asking you to
17 clarify if you're still referring to
18 Brevet Holdings.

19 I believe, your most recent
20 question just used the term Brevet.

21 MR. DUMAIN: We're only talking
22 about Brevet Holdings, but we'll do it
23 simply.

24 Q. Mr. Lan, what kind of
25 investments does Brevet Holdings, LLC

1 Johnny Lan

2 manage, if any?

3 A. Financial investments.

4 Q. Could you be more specific than
5 financial investments?

6 A. Generally, it's -- I would say
7 the investments are related to lending.

8 Q. Mr. Lan, are you familiar with
9 the entity Brevet Capital Management, LLC?

10 A. Define familiar.

11 Q. You don't know what the word
12 familiar means?

13 A. I know what familiar means in
14 general, but are you -- you know, yes,
15 I've heard the entity, right. I know it's
16 one of the Brevet entities, but like I
17 said before, I just -- I'm not an expert
18 in what all the different entities
19 specifically do or what they were set up
20 to do.

21 Q. You can't tell me more than that
22 about what Brevet Capital Management does?

23 A. I believe, that is the entity
24 for the actual management of the
25 investments.

1 Johnny Lan

2 Q. Forgive me if I've asked you
3 this already, what Brevet entity are you
4 employed by today?

5 A. Today, I am self-employed.

6 Q. Do you no longer work for
7 Brevet?

8 A. Not as an employee.

9 Q. Do you do work for Brevet as a
10 consultant?

11 A. Yes.

12 Q. Is that a contractual
13 relationship?

14 A. Yes.

15 Q. With which Brevet entity do you
16 have a consulting contract?

17 A. Actually, I can't recall
18 specifically right now.

19 Q. When did you cease to be
20 employed by Brevet and become a consultant
21 to Brevet?

22 A. If I recall correctly, it was
23 approximately, in 2018.

24 Q. For purposes of simplicity, when
25 I refer to Brevet today, I'll be referring

1 Johnny Lan

2 to the Brevet entities as a collective,
3 unless, the context, or the specific
4 question, relates to a particular Brevet
5 entity.

6 Will you understand that to be
7 what I mean if I say Brevet?

8 A. I understand that's what you
9 mean, but I just, again, I'm not an expert
10 in, you know, the differences between the
11 various entities, so, I would like you to
12 keep that in mind.

13 Q. In your day-to-day work at
14 Brevet, both as an employee and as a
15 consultant, do people, Brevet employees,
16 were they typically delineated by which
17 Brevet entity they worked for or did
18 people work, generally, for the collective
19 group of entities?

20 MR. UNDERWOOD: Object to the
21 form of the question.

22 A. Again, I'm not privy to the
23 details of who's employed by which entity.

24 Q. When you were working at Brevet,
25 in your capacity as a consultant to

1 Johnny Lan

2 Brevet, do you distinguish between which
3 particular entity any Brevet employee
4 might work for?

5 A. Generally, no.

6 Q. Do you today hold yourself out
7 as having a Brevet title?

8 A. What do you mean by "Brevet
9 title?"

10 Q. Let me ask it in a different
11 way.

12 At various points you've had the
13 title head of IT at Brevet; is that
14 correct?

15 A. Do you mean when I was employed
16 at Brevet?

17 Q. When you were employed at
18 Brevet, was your title head of IT?

19 A. Yes.

20 Q. Is your title head of IT today?

21 A. I suppose you say, in substance.
22 It's not that we have official titles, so
23 to speak.

24 Q. Do you have a Brevet e-mail
25 account today?

1 Johnny Lan

2 A. Yes.

3 Q. Is there a signature block in
4 this e-mail?

5 A. Yes.

6 Q. What is the title under your
7 name in the signature block today?

8 A. There's no title in my signature
9 block.

10 Q. Was there ever a title in your
11 signature block at Brevet?

12 A. No. I don't believe there was.

13 Q. When did you join Brevet as an
14 employee?

15 A. Is someone hearing banging in
16 the background?

17 Q. Yes. We're going to have to
18 resolve that at a break. My apologizes.

19 A. Could you repeat the last
20 question?

21 Q. Yes.

22 When did you first join Brevet?

23 A. I believe, it was around 2008.

24 Q. What was your title then?

25 A. Again, I don't believe I was

1 Johnny Lan

2 assigned an official corporate title.

3 Q. What were your responsibilities
4 in your first job at Brevet?

5 A. My responsibilities, primarily
6 consisted of, assisting with the
7 investments that Brevet was looking at.

8 Q. What were your responsibilities
9 in that role?

10 How did you assist?

11 A. In multiple ways. As an
12 example, I would, let's say, help perform
13 analysis.

14 Q. How long did you hold that
15 position for?

16 A. I couldn't tell you for sure.
17 Several years.

18 Q. Who did you report to in that
19 position?

20 A. I don't believe I had an
21 official -- one superior that I reported
22 to.

23 Q. What do you mean by "superior?"

24 A. A supervisor or somebody above
25 me.

1 Johnny Lan

2 Q. I think, we'll mark the next
3 Exhibit, a LinkedIn profile that might
4 help us with a timeline. It should appear
5 in that marked Exhibits folder.

6 (Whereupon, Plaintiff's Exhibit
7 2, LinkedIn profile was marked, for
8 identification, as of this date.)

9 Q. It should be there right now.

10 A. It just showed up.

11 Q. Is this your LinkedIn profile?

12 A. It looks like it, yes.

13 Q. To start, does it indicate, at
14 least on this document, that you are still
15 the head of technology at Brevet Capital
16 Management?

17 A. I see that's what it says on the
18 document.

19 Q. Is that accurate?

20 A. Yes.

21 Q. Then, underneath it says
22 "investment professional, January 2008 to
23 December 2013."

24 Is that the time period during
25 which you were an investment professional

1 Johnny Lan

2 at Brevet?

3 A. I would say that's approximately
4 accurate.

5 Q. Why did you change positions in
6 January of 2014?

7 A. I believe, at the time Brevet
8 was looking for someone to step into that
9 role, and I had the interest, so, I
10 stepped up.

11 Q. Did you have any IT job
12 experience prior to January of 2014?

13 A. Yes.

14 Q. What was that?

15 A. I worked in Lehman Brothers IT
16 group early in my career.

17 Q. Looking back at the LinkedIn
18 profile, is that with TDP, analyst entry?

19 A. Yes.

20 Q. What is a TDP analyst?

21 A. If I recall correctly TDP stood
22 for Technology Development Program.

23 Q. What did you do as a TDP analyst
24 on a day-to-day basis?

25 A. To the best of my recollection,

1 Johnny Lan

2 I worked on the various IT systems that
3 Lehman Brothers used.

4 Q. With regard to this role at
5 Lehman, did you have any other
6 professional IT experience at the time you
7 became Brevets' head of technology in
8 January of 2014?

9 A. Yes. There was some technology
10 related experience, as you can see from
11 the LinkedIn profile before that.

12 Q. What are you directing me to on
13 the LinkedIn profile?

14 A. Summer analyst, Kiodex, Inc.
15 Before that at Consolidated Apparel Group.

16 Q. Those were technology positions?

17 A. Yes.

18 Q. Have you had any training in IT
19 before you took the head of IT position in
20 January of 2014?

21 A. Could you tell me what you mean
22 by IT training?

23 Q. Sure.

24 Did you take any IT courses in
25 college, for example?

1 Johnny Lan

2 A. I took technology related
3 courses in college, yes.

4 Q. Can you tell me what those were?

5 A. Sure.

6 Computer science, as I recall.

7 Q. When you took the head of
8 technology role in Brevet in January of
9 2014, had you had any training or
10 experience in IT security?

11 A. Not that I can remember.

12 Q. Do you recall ever having
13 received any training or taking any
14 courses related to the Federal Computer
15 Fraud and Abuse Act?

16 A. You mean, training or courses
17 related to the actual law?

18 Q. Correct.

19 A. No.

20 Q. Have you ever heard of the term
21 brut force attack?

22 A. Yes.

23 Q. What is a brut force attack?

24 A. My understanding of a brut force
25 attack is -- this was attempting different

1 Johnny Lan

2 combinations, permutations until you get
3 the correct password.

4 Q. Could you briefly describe your
5 educational background post high school?

6 A. Sir, you were fading in again.

7 Q. I'm just asking for you to tell
8 us about your educational credentials post
9 high school?

10 A. Okay.

11 I have a bachelors degree and a
12 Masters Degree.

13 Q. And those degrees are reflected
14 here on your LinkedIn profile, correct?

15 A. Yes.

16 Q. I see you have a degree in
17 operations research or undergraduate
18 degree, correct?

19 A. Yes.

20 Q. What is operations research?

21 A. It is -- are you familiar with
22 industrial engineering?

23 Q. I think, you should just say
24 industrial engineering to keep the
25 questions going in the right direction.

1 Johnny Lan

2 A. Okay. Yes.

3 Q. Is operations research an
4 industrial engineering field?

5 A. Yes.

6 Q. Is it correct that you received
7 an Executive Master of Science in
8 Technology Management from Columbia in
9 2019?

10 A. Yes.

11 Q. Can you, briefly, describe what
12 the curriculum for a Master of Science and
13 Technology Management?

14 A. It generally entails -- off the
15 top of my head, it generally deals with
16 being a leader and manager, specifically,
17 in the field of technology or in the role
18 of technology.

19 Q. Is there any particular
20 concentration for this degree?

21 A. Are you asking if the degree
22 has -- offers concentrations?

23 Q. Did you have an area of
24 specialization or a major for your
25 technology management degree?

1 Johnny Lan

2 A. No. The program did not offer
3 any official majors or concentrations in
4 that sense.

5 Q. I see on your LinkedIn profile
6 that you received three certifications in
7 security since December of 2020; is that
8 correct?

9 A. No.

10 Q. Have you received any
11 certifications in information security?

12 A. Yes.

13 Q. When did you receive them?

14 A. August of 2021.

15 Q. What caused you to obtain that
16 certification?

17 MR. UNDERWOOD: Object to the
18 form of the question.

19 A. Just personal and professional
20 interest in development.

21 Q. Why had you not obtained that
22 certification earlier in your professional
23 development?

24 MR. UNDERWOOD: Object to the
25 form of the question.

1 Johnny Lan

2 A. I just -- that certification is
3 actually quite involved, so, I suppose I
4 never found the time until recently.

5 Q. Mr. Lan, what was the reason
6 your employment by Brevet ended and you
7 became a consultant to Brevet?

8 A. Professionally, I wanted the
9 opportunity to explore other perspective
10 opportunities.

11 Q. Are you performing the same job
12 functions today as a consultant to Brevet
13 as you were performing when you were
14 employed by Brevet?

15 A. Generally, yes.

16 Q. Do you have any other employment
17 outside of Brevet?

18 A. I have a couple of other
19 clients.

20 Q. Did you decide to end your
21 employment relationship with Brevet or did
22 Brevet decide to end it?

23 A. I believe, I decided.

24 Q. Did you offer to stay on as a
25 consultant or did Brevet ask you to stay

1 Johnny Lan

2 on as a consultant?

3 A. Sitting here today, I don't
4 recall the exact circumstances.

5 Q. While you were still an employee
6 of Brevet, who did you report to?

7 A. Understanding that I held
8 numerous roles throughout my tenure at
9 Brevet, so, I couldn't give you an exact
10 answer on that.

11 Q. As the head of technology at
12 Brevet, who did you report to?

13 A. Again, the way it was
14 structured, I did not have an official
15 reporting relationship or status with any
16 one particular person.

17 Q. Did anybody give you performance
18 reviews in your capacity as head of
19 technology at Brevet?

20 A. Yes. I recall having
21 performance reviews done, yes.

22 Q. Who delivered those reviews?

23 A. I believe, at the time, we were
24 doing 360 Reviews, so, it would be across
25 the firm.

1 Johnny Lan

2 Q. What do you mean by a 360
3 Review?

4 A. Generally, those -- 360 Reviews
5 are such that people that work around you
6 can put in reviews.

7 Q. On this topic, finally, in your
8 capacity as a consultant to Brevet, do you
9 have a point of contact to whom you're
10 answerable?

11 A. Again, I wouldn't say it's a
12 single point of contact.

13 Generally, senior management.

14 Q. Who is senior management of
15 Brevet today?

16 A. Sorry. I couldn't hear the very
17 beginning.

18 Q. Who is senior management of
19 Brevet today?

20 A. As I understand it, Douglas
21 Monticciolo and Mark Callahan.

22 MR. DUMAIN: Colin, we're going
23 to turn to the 30(b)(6) topics next,
24 so, perhaps it's a good place for a 10
25 minute break.

1 Johnny Lan

2 MR. UNDERWOOD: Before we go off
3 the record, you can ask him about
4 whatever topics in whatever order. I
5 thought the process that we discussed
6 all last week was to take his
7 testimony, and if his testimony as
8 Johnny Lan is unable to respond to
9 things that you think are covered by
10 the 30(b)(6) notice, then, we can
11 discuss that at some point.

12 I think, Johnny can cover all of
13 those topics and has been designated
14 to cover all those topics. I thought
15 it was just going to be taken in his
16 personal capacity, so, he doesn't have
17 to try and think about, gee, you
18 know -- I don't know if there's
19 anything in that category, but I
20 thought that was the way we were going
21 to go. It also keeps it a little bit
22 clearer in terms of the time limits on
23 the deposition because there's a time
24 limit on his personal deposition,
25 which I don't know whether you

1 Johnny Lan

2 anticipate filling, but there's also a
3 time limit that also applies to the
4 30(b)(6) deposition.

5 But it's your deposition and
6 we'll muddle through however we want.

7 MR. DUMAIN: Let me respond to
8 that because, I think, you're not
9 saying anything that is too much
10 different.

11 I'm going to ask him questions
12 about the 30(b)(6) topics, because of
13 his role, I think, he will be able to
14 answer in his personal capacity. I
15 guess, we can sort out later whether,
16 for purposes of 30(b)(6) testimony and
17 what that means, whether it's
18 ultimately designated, but I don't
19 think, as I look at what the questions
20 are going to be, that there's a
21 distinction here, in terms of he won't
22 be able to answer.

23 Terrific. So, why don't we take
24 10.

25 MR. UNDERWOOD: Okay.

1 Johnny Lan

2 VIDEOGRAPHER: The time is 9:49
3 a.m. and we're going off the record.

4 (Discussion held off the
5 record.)

6 VIDEOGRAPHER: The time is 10:03
7 a.m. We're back on the record.

8 Q. Mr. Lan, if you could, please,
9 take a look again at deposition Exhibit 1,
10 which is a notice of deposition?

11 A. Okay.

12 Q. I'm going to ask you a series of
13 questions about topic 22, which is on page
14 12.

15 A. Okay.

16 Q. Do you see that this topic
17 concerns computers for use at Brevets'
18 physical offices, correct?

19 A. Yes.

20 Q. Did Brevet have a written policy
21 concerning the purchase of computers for
22 use at its physical offices?

23 A. At this time, I can't recall
24 whether there's a specific policy on that.

25 Q. When you say at the time, what

1 Johnny Lan

2 time are you referring to?

3 A. At this time.

4 Q. At this time.

5 Do you recall whether there was
6 ever a written policy concerning the
7 purchase of computers for use at Brevet's
8 office?

9 MR. UNDERWOOD: Tracie, can you
10 read back at prior answer?

11 I think, he was just saying
12 right now he can't testify whether
13 there was.

14 Could you just read his answer?

15 (Whereupon, the record was read
16 back by the reporter.)

17 MR. DUMAIN: Thank you.

18 Thank you for the clarification,
19 Colin. Let me do it this way.

20 Q. Mr. Lan, as you sit here today,
21 you cannot recall whether there was ever a
22 written policy concerning the purchase of
23 computers for use at Brevets' physical
24 offices, correct?

25 A. Correct.

1 Johnny Lan

2 Q. Thank you.

3 As you sit here today, can you
4 recall whether there was ever a written
5 policy concerning the configuration of
6 computers for use at Brevets' physical
7 offices?

8 A. No. Not that I can recall.

9 Q. To be clear, you cannot recall
10 there being a written policy concerning
11 the configuration of computers for use at
12 Brevets' physical offices?

13 A. Could you clarify on what --
14 what you mean, in terms if such a policy
15 existed would cover?

16 Do you mean like a detailed
17 policy on how the computers should be
18 configured?

19 Q. Was there any written policy
20 about how computers at Brevets' physical
21 offices should be configured?

22 A. Sitting here today I can't
23 remember a specific policy that addresses
24 that, no.

25 Q. Was there ever a written policy

1 Johnny Lan

2 concerning how the computers at Brevets'
3 physical offices would be serviced?

4 A. Again, not that I can recall at
5 this time.

6 Q. To speed this up, I'm going to
7 ask this question as a series. If the
8 answer is yes for any of them, we'll break
9 it apart; okay?

10 Was there a written policy
11 governing the repair, setup, maintenance,
12 or administration of computers at Brevets'
13 physical offices?

14 A. Not that I can recall at the
15 present time.

16 Q. Thank you.

17 Was there a practice or
18 procedure for the purchase of computers at
19 Brevets' physical offices?

20 A. There was a general practice,
21 sure.

22 Q. Please, describe the general
23 practice?

24 A. The purchase would be approved
25 by management. I would acquire the

1 Johnny Lan

2 computers. Then, I would set them up.

3 And then deploy them.

4 Q. Focusing just on the purchase.

5 Would you purchase computers for
6 Brevets' physical offices on an ad hoc
7 basis, one at a time, or systematically?

8 A. It would depend on the
9 situation.

10 Q. In what situation would you
11 purchase the computers systematically in a
12 group?

13 A. Do you mean like in bulk?

14 Q. Yes.

15 A. Generally, that would be when we
16 were moving offices, something like that.

17 Q. When you moved offices and
18 purchased computers in bulk, would those
19 be to replace existing computers?

20 A. Generally, yes.

21 Q. What would Brevet do with the
22 computers it was replacing?

23 A. We would generally make a backup
24 of any business data and, then, dispose of
25 the computers.

1 Johnny Lan

2 Q. How would you dispose of the
3 computers?

4 A. Again, in general, we would use
5 an IT liquidation firm.

6 Q. What's an IT liquidation firm?

7 A. It's a vendor that would come in
8 and take equipment you wish to dispose of.

9 Q. Why would you use an IT
10 liquidation vendor, instead of, for
11 example, putting the old computers out
12 with the trash?

13 A. Because IT liquidation firms,
14 they are professionals in, you know,
15 taking out the equipment, and in certain
16 cases, they may give us some nominal
17 amount of money for the equipment.

18 Q. Are you aware of restrictions
19 concerning the disposal in the trash of
20 technology like computers?

21 A. Am I aware of the --

22 Q. To your knowledge, can you just
23 put computers out with the trash?

24 A. You mean, Brevet computers?

25 Q. Any computers.

1 Johnny Lan

2 A. I can only speak to what Brevet
3 does.

4 No, we don't generally just put
5 computers in the trash.

6 Q. Why don't you just put computers
7 in the trash?

8 A. Because that opens up security
9 concerns.

10 Q. So, you testified about the
11 practice with respect to purchasing
12 computers in bulk, correct; for Brevets'
13 offices?

14 A. I believe, that's what you were
15 just asking me about, yes.

16 Q. Under what circumstances would
17 you purchase a computer for Brevets'
18 office on a one off basis?

19 A. Generally, let's say that would
20 be in the due course of running the
21 business.

22 Q. Could you expand?

23 In what circumstances would you
24 need to buy a computer in due course of
25 running a business?

1 Johnny Lan

2 A. If we were hiring additional
3 staff, for example.

4 Q. Returning to the purchase of
5 bulk computers.

6 What was the practice for
7 configuring a bulk purchase of computers?

8 A. Again, our procedures change
9 over time. So, I need you to specify
10 which period of time you're referring to.

11 Q. In 2015, what was the practice
12 for configuring multiple computers at
13 once?

14 A. To the best of my recollection,
15 at that point in time, we had a standard
16 image that we replicated to the newly
17 acquired computers.

18 Q. Could you tell me what you mean
19 by "standard image?"

20 A. So, we would set up one computer
21 to how we want it and then we would
22 restore -- we would -- I'm just trying to
23 figure out how to explain this in layman's
24 terms.

25 Once you have that set, you

1 Johnny Lan

2 freeze that image, then, you would
3 replicate it across the rest of the
4 computers so you wouldn't have to do the
5 individual configurations.

6 Q. By "configuration," you mean,
7 the software on the particular computer?

8 A. Right. For example, operating
9 system settings, applications.

10 Q. When you would purchase a single
11 computer for a new employee, for example,
12 would you use the same process of using
13 the standard image to configure that
14 single computer?

15 A. I would, if there's a matching
16 image to the model that was just acquired.

17 Q. The model computer, you mean?

18 A. Yes.

19 Q. What would you do if there was
20 not a matching image to the model that had
21 just been acquired?

22 A. I would typically configure it
23 manually.

24 Q. Was it Brevets' practice to
25 equip each computer at its physical

1 Johnny Lan

2 offices with the same fleet of software?

3 A. Generally, yes.

4 You're on mute, I think.

5 Q. Thank you.

6 What was the practice for
7 servicing, and repairing, and maintaining
8 the computers that were in Brevets'
9 physical offices?

10 A. It's kind of a broad question.
11 There are many things we do to ensure the
12 upkeep, and running, and health of the
13 computers.

14 Q. Did you service, and maintain,
15 and repair the computer in-house or did
16 you use an outside vendor; if it changed
17 over time, please, let me know?

18 A. We have generally configured the
19 computers in-house.

20 Q. What about repairing or
21 maintaining, have you done that in-house,
22 also, or have you used outside vendors?

23 A. We generally did that in-house.
24 We have had providers that assist, but we
25 never fully offloaded the maintenance to

1 Johnny Lan

2 the vendor.

3 Q. In what circumstances have you
4 used vendors to perform maintenance on
5 Brevet computers?

6 A. Can you specify what you mean by
7 "maintenance?"

8 Is it hardware maintenance,
9 software maintenance?

10 Q. Let's break it apart.

11 Have you used outside vendors to
12 perform hardware maintenance for Brevet
13 computers and Brevets' physical offices?

14 A. Generally, no. There may have
15 been a couple of instances.

16 Q. At any point, have you used
17 outside vendors to perform software
18 maintenance or updates on the computer in
19 Brevets' physical offices?

20 A. Yes, but that changes. That's
21 something that changed over time or
22 evolves over time.

23 Q. Can you describe the evolution
24 over time?

25 A. Just, generally, the vendors

1 Johnny Lan

2 that we've used have become more -- we've
3 put more of the operating system updates
4 responsibilities onto the vendor over
5 time.

6 Q. Starting with today, what is a
7 vendors' responsibility for operating
8 system updates?

9 A. Today? You're asking about
10 today, right?

11 Q. Correct.

12 Again, this is all about the
13 computers in Brevets' physical offices?

14 A. Okay.

15 Today, the vendor is responsible
16 for ensuring that the technical controls
17 are in place, such that the computers
18 would run updates automatically, and they
19 would also -- the vendor, that is, would
20 also monitor whether the updates were
21 performed successfully.

22 Q. When did Brevet begin using a
23 vendor to perform these functions for the
24 computers in its physical offices?

25 A. At this time, I can't recall the

1 Johnny Lan

2 exact time that that began.

3 Q. Before Brevet began using a
4 vendor to perform operating system updates
5 for the computers at its physical offices,
6 who at Brevet was responsible for
7 operating system updates to the computers
8 in its offices?

9 A. Generally, it was me.

10 Q. What would that entail, in
11 practice?

12 A. It would generally entail making
13 sure that the operating system had the
14 automatic update setting enabled, but, you
15 know, at the time Microsoft's operating
16 system wasn't always super consistent in
17 making sure the updates were installed,
18 even if the setting was there, so, I
19 would -- whenever I work on a computer, a
20 Brevet computer, I saw that -- if I
21 happened to see that the update wasn't
22 fully up to date, I would generally try to
23 manually tell it to update at that time.

24 Q. Was the user of any particular
25 work station responsible for operating

1 Johnny Lan

2 system updates for the computers at
3 Brevets' physical offices at any time?

4 A. I don't recall it ever being --
5 officially being the user responsibility,
6 but we do tell people -- we do generally
7 tell people, hey, if the computer says it
8 needs to restart to do an update, please,
9 let it do so at your earliest opportunity.

10 Q. Can you tell me the name of the
11 vendor you're referring to in your earlier
12 testimony about operating system updates?

13 A. We've gone through several
14 vendors over the years.

15 Are you asking about the current
16 one?

17 Q. Why don't we start with the
18 current one and move backwards in time, if
19 you can?

20 A. By the way, I want to confirm
21 that we are able to designate parts of
22 these -- parts of this deposition as
23 confidential or protected, right?

24 Because even -- in our business,
25 even the vendor that you use is private

1 Johnny Lan

2 information.

3 Q. As I said before, there's a
4 protective order in the case. Your
5 attorneys will have the opportunity under
6 the protective order to designate
7 testimony confidential in consultation
8 with you, subject to the terms of the
9 protective order. So, please, go ahead
10 and answer.

11 A. Okay.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Q. Thank you.

21 Does Brevet have a practice as
22 it relates to the administration of the
23 computers that are in its physical
24 offices?

25 A. Sorry. Could you repeat the

1 Johnny Lan

2 question?

3 Q. Let me state it a different way.

4 Who was responsible for
5 administration over the computers that are
6 used at Brevets' physical offices?

7 A. It was generally me, my
8 colleague Igor, and our IT provider at the
9 time.

10 Q. What's Igor's last name?

11 A. K-O-Y-F-M-A-N.

12 Q. What was the name of the IT
13 provider?

14 A. I just enumerated the various
15 providers we had.

16 Q. Those are the same, got it.
17 What's the term administrator or
18 administration rights mean, as it relates
19 to the administration of computers?

20 A. Are you asking in general?

21 Q. I'm asking, first, in general.

22 A. Could you be more specific?

23 I think you said the
24 administration or administration rights;
25 could you be specific about which one

1 Johnny Lan

2 you're asking about?

3 Q. Sure. Fair clarification.

4 Who had administrator rights for
5 the computers that were physically located
6 in Brevets' offices; and if it's changed
7 over time, then, let's do it over time?

8 A. Okay.

9 Generally, it's the same three
10 parties that I had answered before.

11 Q. What do administrator rights
12 permit the administrator to do at a work
13 station?

14 A. Generally, my understanding is
15 that administrator rights allow the user
16 to perform system -- to perform operations
17 on the system that are typically limited
18 to things that only an administrator
19 should be able to do.

20 Q. Can you give examples of what
21 you're referring to?

22 A. Yes.

23 Q. Please, do.

24 A. Installation of applications.
25 Uninstallation of applications. Actually,

1 Johnny Lan

2 off the top of my head, that's all that
3 comes to mind at the moment.

4 There are more, but I just can't
5 think of them off the top of my head right
6 now.

7 Q. We're going to mark as Exhibit
8 2, or whatever is next in order, a
9 document that Brevet Holdings, LLC
10 personnel policies and employee handbook
11 as of March 2015. It should show up.

12 (Whereupon, Plaintiff's Exhibit
13 3, employee handbook was marked, for
14 identification, as of this date.)

15 Q. Is this a document that you
16 recognize, Mr. Lan?

17 A. Hold on.

18 MR. UNDERWOOD: Hang on.

19 A. Yes. I generally recognize this
20 document.

21 Q. What do you understand it to be?

22 A. I understand it to be policies
23 that employees are to follow while
24 employed by Brevet.

25 Q. If could you turn to page 38 of

1 Johnny Lan

2 the PDF, to the page with the heading

3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

4 A. Okay.

5 Q. You see the subheading [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 A. Yes.

8 Q. There's a paragraph, [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED]

12 A. Yes.

13 Q. Does that paragraph, in part,
14 state the policy with respect to software
15 Brevet computers that were used in the
16 office?

17 A. Sorry.

18 Could you repeat your question?

19 Q. Sure.

20 You see the paragraph that

21 begins [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] then,

23 it goes on?

24 A. Yes.

25 Q. Then, it prohibits employees

1 Johnny Lan

2 using software not directly supplied by
3 the company, correct?

4 MR. UNDERWOOD: Object to the
5 form of the question.

6 A. Yes.

7 Are you talking about the second
8 sentence in that paragraph?

9 Q. Say that again.

10 A. Are you talking about the second
11 sentence in that paragraph?

12 Q. The second sentence is a
13 prohibition on using software not directly
14 supplied by the company on company
15 computers, correct?

16 MR. UNDERWOOD: Object to the
17 form of the question.

18 A. My reading of this document
19 implies -- the second sentence actually
20 says the opposite of that; no?

21 Q. Let's do it this way:

22 Does the group of three
23 paragraphs under the heading [REDACTED]
24 [REDACTED] state the policy of
25 Brevet, as you understand it, relating to

1 Johnny Lan

2 the use of third-party software on Brevet
3 office computers?

4 A. Yes. I believe, that's what it
5 generally suggests on that document.

6 Q. Besides what this document says,
7 I'm asking you, does this document state
8 Brevets' policy, as you understand it,
9 with respect to the use of third-party
10 software on Brevets' office computers?

11 A. Yes.

12 Q. As a matter of practice, could
13 users of Brevet office computers freely
14 install third-party software on their work
15 stations?

16 A. Generally, no.

17 Q. What are you excluding from your
18 answer, if anything?

19 MR. UNDERWOOD: Objection to the
20 form of the question.

21 A. I just wanted to make sure that
22 I'm testifying truthfully and accurately.

23 So, I'm saying that that's
24 generally the case.

25 Q. You can't think of any specific

1 Johnny Lan

2 exclusions, as you sit here, can you, sir?

3 A. I cannot right now.

4 Q. If you could scroll down the
5 page and read the first paragraph under
6 the heading "use of company computers?"

7 A. Okay.

8 Q. Do you understand that first
9 paragraph to state Brevets' policy,
10 insofar as it goes, with respect to the
11 use of company computers at Brevets'
12 offices?

13 A. Yes. I see that everything
14 we've discussed so far applies to all
15 Brevet computers.

16 Q. Right now we're just talking
17 about the computers at Brevets' physical
18 offices.

19 A. Okay.

20 Q. Insofar as we're talking about
21 that, this policy describes the
22 limitations around the use of Brevet
23 computers at Brevets' offices, correct?

24 A. Yes. That appears to be what
25 the document states.

1 Johnny Lan

2 Q. And that was the policy, as you
3 understand it, right?

4 A. Yes. To the extent that the
5 policy has probably gone through several
6 provisions.

7 Q. Do you understand this element
8 of the policy to have changed at any
9 point?

10 A. I don't have that information.

11 Q. As a matter of practice, are the
12 computers at Brevets' physical offices
13 used solely for purposes to benefit the
14 company, excluding, some incidental use
15 unrelated to the clients of the company?

16 MR. UNDERWOOD: Object to the
17 form of the question.

18 A. Yes. I see that's what the
19 document states.

20 Q. I'm asking a slightly different
21 question, which is, in practice, is it the
22 case that the work stations at Brevets'
23 offices are used for purposes to benefit
24 Brevet, except for some minor incidental
25 use by employees; minor incidental

1 Johnny Lan

2 personal use by employees?

3 A. I believe, that is generally the
4 case, yes.

5 Q. If you could look again at
6 Exhibit 1.

7 Topic 22B relates to the
8 monitoring of the computers at Brevets'
9 physical offices. And monitoring is a
10 defined term. So, if you want to scroll
11 back to make sure you have the definition
12 in mind.

13 MR. UNDERWOOD: Sorry.

14 Wait a minute. Sorry, I had the
15 wrong document open.

16 If you want to refer him back to
17 Exhibit 1, what did you want to ask
18 him about?

19 MR. DUMAIN: Sure. I'm just
20 going to ask him a couple of questions
21 about topic 22B. 22B contains the
22 defined term monitoring. So, I was
23 suggesting that he might review the
24 definition of monitoring.

25 A. Which page?

1 Johnny Lan

2 Q. I do. Page five of the PDF.

3 A. Yes, but this definition seems
4 to be referring to yet another --
5 something else.

6 Q. You're one of the defendants in
7 this case, right?

8 A. Yes.

9 Q. The question you're asking is,
10 how the term monitoring was used in the
11 pleadings?

12 A. Right.

13 Q. Okay.

14 For purposes of my question, we
15 can strike out that clause and you can
16 answer with the understanding that
17 monitoring means the monitoring of Brevet
18 employees communications or usage of
19 electronic devices; does that work?

20 A. Okay.

21 Q. As a matter of policy, was
22 Brevet permitted to monitor the
23 communications of its employees that took
24 place on the computers in Brevets'
25 physical offices?

1 Johnny Lan

2 A. Yes.

3 Q. Where is that policy found?

4 A. Back to what we were just
5 looking at. The policies in the employee
6 handbook.

7 Q. As a matter of practice, did
8 Brevet Management actually monitor the
9 work stations within Brevets' physical
10 offices?

11 A. Sitting here, I don't believe I
12 can testify as to what Brevet Management
13 did or didn't do.

14 Q. As head of IT, were you aware of
15 Brevet management monitoring the
16 communications of Brevet employees on the
17 computers that were in Brevets' physical
18 offices?

19 A. When you say "computers," are
20 you referring to anything that was done on
21 the computers? Like activity on the
22 computers?

23 Q. Monitoring for these purposes,
24 means, "communications or usage of
25 electronic devices."

1 Johnny Lan

2 So, let me state it again.

3 As the head of IT for Brevet,
4 were you aware of management monitoring
5 employees' usage of Brevet computers at
6 Brevets' offices?

7 A. Again, as -- I can't speak to
8 what other parties may have monitored or
9 not.

10 Q. You're not aware of Brevet
11 Management doing any monitoring of Brevet
12 employees' usage of Brevets' office
13 computers?

14 A. I am aware that our compliance
15 department monitors the communications.

16 Q. Can you describe your
17 understanding of how the compliance
18 department monitors communications of
19 Brevet employees?

20 A. Yes.

21 Q. Please, provide your
22 understanding, and if the compliance
23 department practices have changed over
24 time, then, please, describe how they
25 changed over time?

1 Johnny Lan

2 A. Again, I just want to make
3 clear, I cannot speak to everything that
4 the compliance department does in the
5 course of their duties in monitoring. But
6 I can say that I am aware that compliance
7 has access to all of the electronic
8 communications on Brevets' system. And
9 that due to regulatory compliance
10 requirements, we monitor the electronic
11 e-mails and instant messages that go
12 through the Brevet system.

13 Q. I would just like to make sure
14 we're using the terms in the same way.
15 You used the term access to.

16 What I'm trying to understand is
17 whether the compliance department
18 actually, at any point that you're aware
19 of, has monitored, meaning, reviewed the
20 communications or activity of Brevet
21 employees on Brevet computers in Brevets'
22 offices?

23 A. Yes, am I generally aware that
24 compliance performs reviews of the Brevet
25 electronic communications that we just

1 Johnny Lan

2 talked about.

3 Q. Have you ever participated in
4 such reviews?

5 A. No.

6 Q. Did you help facilitate such
7 reviews?

8 A. Yes. At times.

9 Q. How have you helped facilitate
10 such reviews?

11 A. I helped make sure that, for
12 example, the compliance folks are able to
13 log into the archive system.

14 Q. Do you recall ever assisting the
15 compliance personnel in logging into the
16 archive system at any point before October
17 of 2016?

18 A. I do not. At this point in
19 time, I do not remember specific
20 instances. Just that I generally have.

21 Q. To be clear, those specific
22 instances might have been before October
23 of 2016, you just can't recall?

24 A. Yes.

25 Q. If we could now mark as Exhibit

1 Johnny Lan

2 4, the November 17, 2017 affidavit of Mr.
3 Lan.

4 (Whereupon, Plaintiff's Exhibit
5 4, November 17, 2017 affidavit was
6 marked, for identification, as of this
7 date.)

8 Q. Before I ask you to look at this
9 document, I just want to understand one
10 thing.

11 Could senior management of
12 Brevet monitor Brevet employee e-mails
13 without your assistance as head of
14 technology?

15 A. Yes.

16 Q. How would they go about doing
17 that?

18 A. They could -- they could log
19 into the archive system by themselves.

20 Q. Insofar as you understand it,
21 does the senior management of Brevet have
22 credentials to get into those archive
23 systems?

24 A. Yes.

25 Q. Do you know whether, as a matter

1 Johnny Lan

2 of fact, Brevet senior management ever
3 logs into the archive systems to review
4 the communications or computer usage of
5 Brevet personnel?

6 A. I'm generally aware that they
7 have done so in the past, but I couldn't
8 tell you, you know, specifically or
9 definitively whether the frequency or when
10 was the last time they did that.

11 Q. Was their ability to monitor
12 computer usage limited to e-mail or is it
13 inclusive of all activity on Brevets'
14 network computers?

15 A. The archive captures e-mails and
16 instant messaging communications.

17 Q. Are you aware of any specific
18 instances where Brevet senior management
19 has monitored employee communications?

20 A. Yes, in general.

21 What are you asking about?

22 Q. I'm asking about specific
23 instances.

24 A. I can't speak to specific
25 instances. I can't testify to specific

1 Johnny Lan

2 instances because I wasn't -- at this
3 juncture, I don't recall being physically
4 present while any members of senior
5 management did such reviews.

6 Q. Can you take a look now at your
7 November 17, 2017 affidavit, please. I'm
8 going to direct you to specific
9 paragraphs, but as an initial matter, do
10 you recognize this affidavit?

11 A. Yes.

12 Q. Did you prepare this affidavit
13 yourself?

14 A. No.

15 Q. Who prepared it?

16 A. I believe, I worked with my
17 counsel in the preparation of this
18 affidavit.

19 Q. Who prepared the first draft?

20 A. I do not recall at this point.

21 Q. Do you recall whether you made
22 any changes yourself to the draft?

23 A. No, I do not recall at this
24 time.

25 Q. When you say your counsel, are

1 Johnny Lan

2 you thinking of a specific person?

3 A. No. I mean, generally, the
4 attorneys I was working with.

5 Q. If you could take a look at the
6 first paragraph.

7 In the sentence that carries
8 over from page one of six to page two of
9 six, you state, "as head of technology, I
10 oversee Brevets' information technology
11 and computer usage, and I render technical
12 support to Brevet employees using Brevet
13 owned equipment;" do you see that?

14 A. Yes.

15 Q. Is it also true that in your
16 role as head of technology at Brevet, you
17 have rendered technical support to Brevet
18 employees using equipment that was owned
19 by the employees themselves?

20 A. Yes.

21 Q. What types of technical support
22 have you rendered to Brevet employees
23 using the employees' owned computer
24 equipment?

25 A. I'm sorry. Could we go back and

1 Johnny Lan

2 clarify?

3 At first, did you say computer
4 equipment or technology equipment?

5 MR. DUMAIN: Tracie, maybe, we
6 can go back and read back the previous
7 question?

8 (Whereupon, the record was read
9 back by the reporter.)

10 Q. Are you able to answer that
11 question, sir?

12 A. The original question said
13 equipment, then, it became computers.

14 So, I generally, you know, I
15 don't recall -- yes, I can help. I have
16 helped employees with their own equipment
17 because we had a bring your own device
18 program.

19 Q. Can you describe for me the
20 bring your own device program?

21 A. Yes. It's -- it allows for
22 employees to -- it allows for us to insert
23 Brevet accounts or access to Brevets'
24 e-mails, for example, onto an employees'
25 personal mobile device.

1 Johnny Lan

2 Q. When was this program initiated?

3 A. I said program before. What I
4 meant was we allowed it. It was not like
5 an official program per se.

6 Q. But Brevet permitted and
7 facilitated it?

8 A. Yes.

9 Q. Can you describe how that would
10 work in practice, or did work, in
11 practice?

12 A. Yes.

13 Q. Please, do?

14 A. In general, we would add the
15 Brevet accounts onto the employees'
16 device, and from there on, it allowed the
17 employee to send and receive Brevet
18 e-mails from that device.

19 Q. Aside from e-mails, would Brevet
20 facilitate the installation of any other
21 Brevet business software on employees'
22 personal devices?

23 A. Yes.

24 Q. What other software?

25 A. This is something that has also

1 Johnny Lan

2 changed over time.

3 Q. Please, prescribe the practice
4 as it changed over time?

5 A. So, based on my recollection,
6 you know, in the earlier years, let's just
7 say, it was the primary -- Brevet -- the
8 primary access to Brevets' systems
9 comprised of e-mails, calendar, and
10 contacts. More recently, the access --

11 I would like to go back. I
12 misspoke.

13 What I was thinking of was the
14 more recent practice of, you know -- we're
15 able to offer more access to more data, if
16 the employee was given a company issued
17 device. So, as far as personal devices
18 go, the bring your own device setup, it
19 was primarily just e-mails, contacts, and
20 calendars.

21 Q. When did that practice begin in
22 reference to the earlier years, but if you
23 could be more specific?

24 A. Do you mean the practice of
25 bring your own device?

1 Johnny Lan

2 Q. When did the practice of bring
3 your own device by which Brevet would
4 facilitate the installation of Brevet
5 e-mails software on personal devices
6 begin?

7 A. Sitting here today, I couldn't
8 give you the exact date or even year. I
9 could only say that it began pretty early
10 on.

11 Q. Was it in effect between 2014
12 and 2017?

13 A. To the best of my recollection,
14 yes. I believe, it was.

15 Q. If an employee had Brevet e-mail
16 installed on the employees' personal
17 device, could the employee save
18 attachments and files to its own personal
19 device?

20 A. Which time period are you
21 referring to?

22 Q. 2014 through 2017.

23 A. I believe, they could at that
24 time, yes.

25 Q. As a matter of policy, were

1 Johnny Lan

2 Brevet employees permitted to save, for
3 example, e-mail attachments onto their
4 personal devices?

5 A. No.

6 Q. Is that pursuant to a written
7 policy?

8 A. I believe so.

9 Q. Can you identify the policy by
10 name, as you sit here today?

11 A. I'm not sure I can identify the
12 exact policy at present.

13 Q. If could you take a look at
14 paragraph two of Exhibit 4. You state
15 that "Brevet has a longstanding practice
16 of purchasing desktop computers and
17 providing them to founding members and
18 other employees for home business use,"
19 correct?

20 A. Yes.

21 Q. How longstanding is that
22 practice?

23 A. I don't know.

24 Q. What was the basis for your
25 statement in this affidavit that there had

1 Johnny Lan

2 been a longstanding practice?

3 A. My basis is that, you know, it's
4 at least during the time that I've been at
5 the firm, I have been aware that Brevet
6 does purchase computers, in general, to
7 deploy at employees' homes to effect our
8 activity.

9 Q. During your tenure with Brevet,
10 how many times have you personally been
11 involved in the acquisition of a computer
12 for a Brevet employee's home?

13 A. Are you referring to my tenure
14 at Brevet as the head of technology or the
15 entire tenure?

16 Q. Why don't we start with the
17 entire tenure?

18 A. Sitting here today, I couldn't
19 give you an exact number or even a close
20 range. It's just numerous.

21 Q. Is it something that happened
22 multiple times a year?

23 A. It can.

24 Q. Can you list for me the Brevet
25 employees that you have assisted in

1 Johnny Lan

2 obtaining computers for their home use?

3 A. Yes.

4 Q. Please, do?

5 A. Before I do, I just want to, you
6 know, clarify that this is -- I'm just
7 going off of my recollection. This is by
8 no means a definitive or exhaustive list.

9 Q. Thank you, Mr. Lan.

10 Just so we can be on the same
11 page, I understand all the testimony
12 you're giving today to be based on your
13 best recollection as you sit here. As we
14 go forward, we can just treat that as an
15 assumption.

16 A. Okay.

17 So, Douglas Monticciolo. Mark
18 Callahan. John Tripp. Holly Iacovacci.
19 Steven O'Keefe. Sam Shuster. Peter
20 Sherman.

21 Q. Does Mr. O'Keefe still work at
22 Brevet?

23 MR. UNDERWOOD: I'm sorry. I'm
24 not sure the witness finished his
25 answer.

1 Johnny Lan

2 MR. DUMAIN: My apologies.

3 A. John Hinkle (phonetic). Mei Li
4 Dasilvavint. There are likely more, but
5 that's what comes to mind off the top of
6 my head.

7 Q. Does Mr. O'Keefe still work at
8 Brevet?

9 A. Not that I'm aware of.

10 Q. Does Mr. Sherman still work at
11 Brevet?

12 A. Not that I'm aware of.

13 Q. Does Mr. Schuster still work at
14 Brevet?

15 A. No. Not that I'm aware of.

16 Q. Does Mr. Hinkle (phonetic) still
17 work at Brevet?

18 A. Again, not that I'm aware of.

19 Q. Do you recall what happened to
20 Mr. O'Keefe's home computer when he left
21 Brevet?

22 A. I believe, he returned it to
23 Brevet.

24 Q. Do you know that?

25 A. It was a long time ago, so -- to

1 Johnny Lan

2 the best of my recollection, he did.

3 Q. And Mr. Sherman, do you know?

4 A. Yes, I believe, he did.

5 Q. Do you know he did?

6 A. Again, this was quite a long
7 time ago. So, you're asking if I
8 specifically remember receiving it, the
9 computer, in the mail or having it dropped
10 off, no, I don't remember.

11 Q. Looking at the second sentence
12 of paragraph two of your affidavit,
13 Exhibit 4, it states, the affidavit does,
14 "the computers provided to these employees
15 belong to Brevet."

16 A. Sorry. Where are you
17 referencing?

18 Q. The second sentence of paragraph
19 two.

20 A. Okay.

21 Q. See that; "the computers
22 provided to these employees belong to
23 Brevet?"

24 A. Yes.

25 Q. Did you draft that sentence?

1 Johnny Lan

2 A. I cannot recall at this time.

3 Q. What's the basis for the
4 statement that "these computers belong to
5 Brevet?"

6 A. It is based on the understanding
7 of Brevets' policies.

8 Q. Is there a written policy that
9 states that these computers belong to
10 Brevet?

11 A. I believe there is.

12 Q. What is that policy?

13 A. Again, right now, I can't recall
14 the exact policy or part of the policy,
15 but that is my understanding.

16 Q. Is there a policy that provides
17 that these computers must be returned to
18 the company upon the end of the employees'
19 employment with Brevet?

20 A. Again, I cannot point you to the
21 exact policy or section, but that is
22 certainly my understanding of Brevets'
23 policies.

24 Q. Just to be clear, when I say
25 policy, I mean written policy that one

1 Johnny Lan

2 might look at.

3 With that understanding, again,
4 you're not aware of any written policy or
5 can't point me to one, correct?

6 MR. UNDERWOOD: Objection to the
7 form of the question.

8 MR. DUMAIN: I can restate it.

9 Q. Mr. Lan, can you point me to a
10 written policy that provides that the
11 computers described in paragraph two must
12 be returned to Brevet upon the end of the
13 respective employees' employment with
14 Brevet?

15 A. Again, I'm not saying that I'm
16 not aware of any policy that says that.
17 I'm just saying, I believe, there is a
18 policy that states that, I just cannot
19 recall off the top of my head exactly
20 which one it is.

21 Q. What are the names of the
22 policies that you believe might include
23 this requirement?

24 A. The employee handbook. The
25 compliance policy.

1 Johnny Lan

2 Q. Are you finished?

3 A. Yes.

4 Q. If you look at paragraph three,
5 the second sentence of the affidavit
6 states "when these founding members were
7 provided with new or updated computer
8 equipment, they were expected to and did
9 return their old computer equipment to
10 Brevet;" do you see that?

11 A. Yes.

12 Can I request that we take a
13 break?

14 Q. Yes. As soon as this question
15 is complete.

16 MR. UNDERWOOD: Wait. I think,
17 he answered your question. Now,
18 you're asking a new question.

19 MR. DUMAIN: Fair enough. Sure.
20 10 minutes?

21 MR. UNDERWOOD: Sounds fine to
22 me. When will we plan to break for
23 lunch; around 12:30?

24 MR. DUMAIN: Why don't we, if
25 we're going to be off the record for

1 Johnny Lan

2 10 minutes, why don't we plan on
3 12:45. We'll go for another hour.

4 MR. UNDERWOOD: Thanks.

5 VIDEOGRAPHER: The time is now
6 11:28 a.m. and we're going off the
7 record.

8 (Discussion held off the
9 record.)

10 VIDEOGRAPHER: The time is 11:49
11 p.m. and we're back on the record.

12 Q. Hello, Mr. Lan.

13 A. Hi.

14 Q. When we broke we were looking at
15 paragraph three of Exhibit 4.

16 Could you take a look at that
17 again?

18 A. Yes.

19 Q. The second paragraph, second
20 sentence of paragraph three states, "when
21 these founding members were provided with
22 new or updated computer equipment, they
23 were expected to and did return their old
24 equipment to Brevet;" you see that,
25 correct?

1 Johnny Lan

2 A. Yes.

3 Q. Did you draft that sentence?

4 A. I cannot recall.

5 Q. Who are you referring to when
6 you say they were expected to and did
7 return their old computer equipment to
8 Brevet?

9 To be clear, who was doing the
10 expecting here?

11 MR. UNDERWOOD: Object to the
12 form of the question.

13 A. I'm not sure what you mean when
14 you say "who is they" in the sentence?

15 Q. In the sentence, you say, "the
16 founding members were expected to return
17 their old computer equipment to Brevet,"
18 correct?

19 A. Yes.

20 Q. Whose expectation was it that
21 the founding members would return their
22 old computer equipment to Brevet?

23 A. The firm's expectation.

24 Q. Was that expectation
25 memorialized somewhere in writing?

1 Johnny Lan

2 A. I do not recall.

3 Q. Do you know why each of the
4 founding members and others who were
5 provided computers for home use returned
6 those computers when they were provided
7 with new or updated equipment?

8 A. Yes.

9 Q. How do you know why they
10 returned them?

11 A. I understood that to be the
12 policy.

13 Q. I'm asking you something
14 slightly different.

15 I'm asking you, do you know what
16 was in the heads of the founding members
17 when they returned their old computer
18 equipment?

19 A. No. I cannot speak to what was
20 in any other human's heads.

21 Q. Did they ever tell you why they
22 were returning the old computer equipment
23 when it was replaced?

24 A. I don't recall being told why,
25 no.

1 Johnny Lan

2 Q. What did you do with the old
3 computer equipment that was turned in when
4 it was replaced with new equipment?

5 A. It depends.

6 Q. Was the equipment ever disposed
7 of by the firm's IT liquidation vendor?

8 A. Yes, possibly.

9 Q. When the founding members
10 returned their computers that had been
11 provided to them for home use, did you
12 remove any sensitive or confidential data
13 from those computers before repurposing
14 it?

15 A. Our general practice is to make
16 a backup of any business related documents
17 or data. And if the computer was being
18 disposed, we would either insure that --
19 after the backup copy has been made, we
20 would either still retain the drive or
21 ensure that the disposal is done in a
22 secure manner.

23 Q. Can you look again at Exhibit 1,
24 the 30(b)(6) notice, and turn now to topic
25 20?

1 Johnny Lan

2 A. Give us a second. Okay.

3 Q. Was there a written policy
4 concerning the purchase of computers for
5 use at the residences of Brevet
6 principals, officers, directors, managers,
7 or employees?

8 A. Sitting here today, I do not
9 recall if there is a specific policy. A
10 specific written policy.

11 Q. Was there a written policy
12 concerning the configuration of those
13 computers?

14 A. Again, sitting here today, I do
15 not recall if there's a written policy.

16 Q. Was there a written policy
17 concerning the service, repair, or
18 maintenance of those computers?

19 A. Sitting here today, I do not
20 recall if there's a specific written
21 policy about that.

22 Q. Is there a written policy
23 concerning the administration of those
24 computers?

25 A. I'm not sure if there's a

1 Johnny Lan

2 written policy.

3 Q. To your knowledge, during Mr.
4 Iacovacci's tenure with Brevet, was there
5 a written policy concerning the
6 administration of computers purchased for
7 use at the residences of Brevet principals
8 and other Brevet employees?

9 MR. UNDERWOOD: Object to the
10 form of the question.

11 A. Again, sitting here today, I
12 cannot recall if there's a specific
13 written policy about that.

14 Q. As you sit here today, do you
15 know whether there's a specific written
16 policy concerning the ownership of
17 computers that Brevet provided for use at
18 the residences of Brevet principals?

19 A. Sitting here today, I'm not able
20 to recall whether there is a specific
21 written policy.

22 Q. As you sit here today, do you
23 know whether there was a written policy
24 that expressly governed the monitoring of
25 computers that were provided for use at

1 Johnny Lan

2 the residences of Brevet principals?

3 A. Sitting here today, I'm not
4 aware or I cannot recall if there's a
5 specific written policy about that.

6 Q. What was the practice for the
7 purchase of computers for use at the
8 residences of Brevet principals?

9 A. Can you elaborate on what you
10 mean by practice?

11 Q. Sure.

12 After it was determined, or how
13 was it determined, if you know, that
14 Brevet would provide a computer for use
15 the residence of a principal or other
16 employee?

17 A. I can't speak to management's
18 state of mind when they made such
19 determinations, but I can say that,
20 generally, if there was -- if a need or a
21 desire arises for somebody to be able to
22 work from home, then, deploying a computer
23 at home would be considered.

24 Q. If approval was granted for the
25 purchase of a computer, what was the

1 Johnny Lan

2 practice with respect to the selection and
3 purchase of that computer?

4 A. Are you referring to -- which
5 timeframe are you referring to?

6 Q. If it changed over time, why
7 don't you tell me how it changed over
8 time?

9 A. So, in the earlier times, we
10 would consider whatever was the current
11 model of the computer, the form factor,
12 and had to make our determinations that
13 way.

14 Q. Did you use the term "form
15 factor?"

16 A. Yes.

17 Q. Can you tell me what that means?

18 A. The size of the -- the physical
19 size of the computer or whether it is a
20 desktop or laptop computer.

21 Q. Who would determine whether the
22 Brevet employee would be provided with a
23 laptop or desktop computer as between
24 those types?

25 A. I don't know that there was an

1 Johnny Lan

2 official process for determining the form
3 factor. We had to evaluate it by a case
4 by case.

5 Q. What was the practice for
6 configuring these computers once they were
7 purchased; and if it changed over time,
8 please, let me know?

9 A. The general practice is that the
10 computers would be setup with the core
11 software necessary to perform Brevet work.

12 Q. Is your answer complete?

13 A. Yes.

14 Q. Would you use a standard image?

15 A. Not necessarily.

16 Q. Why not?

17 A. Because if we're purchasing
18 these -- usually, these purchases are not
19 part of a bulk purchase, so, at that point
20 in time, the model or make could be
21 different, especially, if it's a laptop
22 versus a desktop. The images can only be
23 used for that specific model that it was
24 built on, essentially.

25 Q. Did Brevet ever provide

1 Johnny Lan

2 computers that it had in stock or in its
3 own inventory to its principals or
4 employees for use at home?

5 A. Yes, that might have occurred.

6 Q. Do you recall that it did occur?

7 A. Again, to which timeframe are
8 you referring?

9 Q. Did it ever happen?

10 A. Yes.

11 Q. When did it happen?

12 A. I cannot recall if, you know --
13 I cannot recall specific instances, if
14 we're talking about the earlier
15 timeframes, but certainly recently, in the
16 past year, I would say, it has happened.

17 Q. You can't recall a specific
18 instance more further in the past than
19 within the last year?

20 A. Correct.

21 Q. What were the practices with
22 respect to providing administrator rights
23 on these home computers?

24 A. Our standard practice is to not
25 give administrator access to the

1 Johnny Lan

2 computers, to the users.

3 Q. That's the standard practice
4 with respect to these home computers?

5 A. Yes, to all of our computers.

6 Q. Between 2014 and 2017, what was
7 the practice as it related to the
8 monitoring of these home computers?

9 A. Generally, as I recall, it would
10 be the same as the computers in the
11 office.

12 Q. Were you ever personally
13 involved in monitoring communications on
14 the home computers of Brevet principals?

15 A. Not that I can recall at the
16 present time.

17 Q. Were you ever personally
18 involved in the monitoring of usage of the
19 home computers of Brevet principals or
20 employees?

21 A. Sorry.

22 Could I have that question read
23 back to me?

24 (Whereupon, the record was read
25 back by the reporter.)

1 Johnny Lan

2 A. Can you elaborate on what you
3 mean by the monitoring of the usage?

4 Q. Sure.

5 I'm going to go back to the
6 definition of monitoring. Monitoring
7 means, monitoring of Brevet's employees
8 communications or usage of electronic
9 devices. So, usage would mean the
10 activity on those devices.

11 A. No. Not that I recall.

12 Q. Mr. Lan, were Brevet employees
13 permitted to conduct Brevet business on
14 their personal computers?

15 A. Which timeframe are you
16 referring?

17 Q. 2014 and 2017, were Brevet
18 employees permitted to conduct Brevet
19 business on their personal computers?

20 A. Sitting here today, I cannot
21 recall if that was permitted during the
22 years that you're referring to.

23 MR. DUMAIN: We're going to mark
24 as Lan Exhibit 5, a November 15, 2014
25 e-mail, Bates range, Brevet 150464.

1 Johnny Lan

2 (Whereupon, Plaintiff's Exhibit
3 5, 150464 was marked, for
4 identification, as of this date.)

5 Q. The Bates range is 150464.

6 MR. UNDERWOOD: That's Exhibit
7 5, correct?

8 MR. DUMAIN: Correct.

9 MR. UNDERWOOD: It hadn't shown
10 up on my screen yet.

11 Q. Mr. Lan, take a look at this
12 document and let me know when you've
13 completed your review?

14 A. Okay.

15 Q. Mr. Lan, do you recognize this
16 e-mail exchange?

17 A. Recognize? Yeah.

18 Q. What is it?

19 A. It appears to be an exchange
20 between Paul and myself, and, then,
21 leading to an announcement from me to the
22 rest of the firm.

23 Q. What is a VPN?

24 A. Did you say VPN?

25 Q. Yes. The e-mail exchange, it

1 Johnny Lan

2 makes reference to VPN instructions; what
3 is a VPN, to start?

4 A. Stands for virtual private
5 network.

6 Q. What is the purpose of a virtual
7 private network?

8 A. The VPN generally allows or
9 facilitates a secure means of access from
10 a device outside of the company network
11 into the company network.

12 Q. Is the function of the VPN to
13 permit, among other things, Brevet
14 employees to access the Brevet network
15 using their own personal computers?

16 A. Yes.

17 Q. In this e-mail exchange, you are
18 inviting Brevet employees to install the
19 VPN on their own personal computers,
20 correct?

21 A. I just want to clarify, I
22 disagree with the characterization. It
23 was not an invitation per se. It was just
24 letting people know that this was an
25 option.

1 Johnny Lan

2 Q. As of November 15, 2014, Brevet
3 was providing its employees with the
4 option of accessing the Brevet network
5 using their own personal computers through
6 a VPN, correct?

7 A. Yes.

8 Q. So, as of this date, at least,
9 Brevet permitted its employees to conduct
10 Brevet business using their own personal
11 computers, correct?

12 A. It would appear so from the
13 document.

14 Q. You sent this e-mail.

15 Are you saying, as you sit here
16 today, you don't have any recollection of
17 Brevet permitting its employees to access
18 the Brevet network using a VPN?

19 A. I'm not disputing what it says
20 in the e-mail or that I sent the e-mail.
21 It's just our, you know, IT infrastructure
22 has transformed over time. This was from
23 quite a while ago.

24 Q. Do you recall that there was a
25 period of time during which Brevet

1 Johnny Lan

2 permitted its employees to access its
3 network using their own personal computer
4 through a VPN?

5 A. Yes, vaguely.

6 Q. During the period that Brevet
7 permitted its employees to access the
8 Brevet network using their personal
9 computers through a VPN, would it have
10 been possible, from a technological
11 perspective, for those employees to
12 download and save files from the Brevet
13 network to their own personal computer?

14 A. Sitting here today, I cannot
15 recall the exact precisely whether that
16 was possible.

17 Q. Can you describe with any
18 greater specificity the way the VPN
19 technology works?

20 A. No.

21 Q. Was the VPN an application that
22 would be installed on the personal
23 computer of Brevet employees?

24 A. Sorry. Was that a question?

25 Q. Yes.

1 Johnny Lan

2 A. Can you repeat the question?

3 Q. Sure.

4 Let me rephrase it.

5 As a functional matter, how did
6 the VPN work?

7 MR. UNDERWOOD: Object to the
8 form of the question.

9 A. As I stated before, generally,
10 the VPN allows the user to connect from a
11 device that's outside of the company
12 network into the company network.

13 Q. Once the user gains access to
14 the company network through the VPN, what
15 are they allowed to do from within the
16 network?

17 A. They could -- primarily, they
18 could access certain areas of the company
19 network to which they were privy.

20 Q. You don't know whether they
21 could access those areas of the network
22 and download and save files to their
23 personal computers?

24 A. Sitting here today, I cannot
25 recall if they could or not.

1 Johnny Lan

2 Q. We're going to mark as Lan
3 Exhibit 6, a November 15, 2014 e-mail with
4 the production number Brevet 150452.

5 Actually, let's withdraw that.
6 We don't have to mark that.

7 MR. UNDERWOOD: Too late.

8 MR. DUMAIN: Well, we're not
9 going to look at it.

10 MR. UNDERWOOD: The one time you
11 don't want it to be quick, it's quick.

12 MR. DUMAIN: It's okay. It's
13 another version of the same chain.

14 (Whereupon, Plaintiff's Exhibit
15 6, 150452 was marked, for
16 identification, as of this date.)

17 Q. Mr. Lan, if you could look at
18 what's already been marked Exhibit 5, the
19 top e-mail in the chain, you state that
20 "if the computer is shared with other
21 members of the family, please, install it
22 under your own Windows account and have
23 others use a separate account;" do you see
24 that?

25 A. Yes.

1 Johnny Lan

2 Q. What was the purpose of that
3 direction, if you recall?

4 A. I did not want people's personal
5 use of the computer, either by them or
6 their family members, or people that lived
7 with them, to interfere with the Brevet
8 use of the computer.

9 Q. What caused you to be concerned
10 that Brevet employees' personal computers
11 might be accessed by their family members?

12 A. Just to be clear, you're asking
13 about what, that to my saying, "use a
14 separate account" or what led to my
15 saying, "please, only install this on
16 personal computer, not public computers"?

17 Q. I'm asking what caused your
18 concern that people might -- that Brevet
19 employees' family members -- might gain
20 access to the network through these
21 personal computers?

22 A. Just because of the way it
23 worked, if someone was logged on, let's
24 say through the VPN, with access to Brevet
25 files, then, as an example, if someone's

1 Johnny Lan

2 kids -- let's say they stepped away and
3 someone's kids came up to the computer,
4 they could inadvertently delete files or
5 make changes that were unintentional.

6 Q. I'm going to show you what's
7 already been marked Lee deposition Exhibit
8 5.

9 MR. UNDERWOOD: Got it up here.
10 Three cheers for efficiency.

11 MR. DUMAIN: I still think this
12 is more efficient than handing out
13 paper exhibits to a conference room
14 full of people.

15 MR. UNDERWOOD: Sure.

16 Q. Mr. Lan, do you recognize this
17 document?

18 A. Yes.

19 Q. What is it?

20 A. It appears to be the general
21 e-mail retention and instruction policy.

22 Q. As of January 2015?

23 A. Yes.

24 Q. Could you turn to page four of
25 the PDF. I'm going to direct your

1 Johnny Lan

2 attention to a paragraph under heading
3 e-mail.

4 A. Okay.

5 Q. You see the second sentence, it
6 says, "it is permissible for an employee
7 to communicate via a home computer for
8 investment advisory related business,
9 provided that the employee uses the
10 electronic mail system of the company,"
11 right?

12 A. I see that sentence.

13 Q. First, do you have an
14 understanding of what the term investment
15 advisory related business means?

16 A. I believe, that's referring to
17 Brevets' general business.

18 Q. What was Brevets' general
19 business?

20 A. Investment advisory.

21 Q. Who did Brevet give investment
22 advice to?

23 MR. UNDERWOOD: Objection to the
24 form of the question.

25 A. I can't really speak to, you

1 Johnny Lan

2 know, exactly all the various parties,
3 just the details of Brevets' business as
4 described like that.

5 Q. Does this policy provide that
6 for at least some portion of Brevets'
7 business, as of January 2015, it was
8 indeed permissible for employees to use
9 home computers for business purposes?

10 A. It appears that way from this
11 document.

12 Q. Do you have any contrary
13 recollection?

14 A. I do not.

15 Q. Mr. Lan, did you ever use a
16 personal e-mail account for Brevet
17 business?

18 MR. UNDERWOOD: Object to the
19 form of the question.

20 A. Not that can I recall.

21 Q. Have you ever used your own
22 personal computer to conduct Brevet
23 business?

24 MR. UNDERWOOD: Objection to the
25 form of the question.

1 Johnny Lan

2 A. Sitting here today, I cannot
3 recall if I did.

4 Q. Do you have a Brevet provided
5 computer in your home?

6 A. Yes, but it's a laptop, so, it's
7 not -- so, I guess, yes.

8 Q. Do you take that laptop to and
9 from work with you when you go into the
10 office?

11 A. No. Not usually.

12 Q. Do you have another computer
13 that you use when you're in the office?

14 A. Yes.

15 Q. Do you use that Brevet laptop
16 that stays mostly in your home for
17 personal business?

18 A. For personal business, you said?

19 Q. Yes.

20 A. Kind of sounds like an oxymoron,
21 but, yes, I occasionally use the laptop
22 for personal matters.

23 Q. Does the laptop that you have at
24 home, the Brevet laptop that you have at
25 home, have a separate family account?

1 Johnny Lan

2 A. No.

3 Q. Does anyone else live with you
4 in your home?

5 A. Yes.

6 Q. Does anyone who lives with you
7 in your home use the Brevet provided
8 computer for any purpose?

9 A. No.

10 Q. Do you have another computer in
11 your home that the people who live with
12 you use?

13 A. Yes.

14 Q. Do you use that computer, also?

15 A. Yes.

16 Q. Turning back to Lan Exhibit 5.
17 Could you just look down the page at that
18 prohibited communication?

19 A. Okay.

20 Q. Do you see, it provides, "as
21 further described in the company's
22 technology usage policy, the company
23 prohibits e-mail that" -- the final bullet
24 says -- "it's an unauthorized transmission
25 of confidential information and/or trade

1 Johnny Lan

2 secrets;" do you see that?

3 A. Yes.

4 Q. In your role as head of
5 technology, did you have any
6 responsibility for ensuring that no
7 unauthorized transmission of confidential
8 information or trade secrets was made
9 through e-mail?

10 A. It's generally not my job to
11 ensure that.

12 Q. Whose job is it, if anyone?

13 A. I don't know. I'm assuming the
14 compliance department.

15 Q. You don't know if it's anyone's
16 job?

17 A. My understanding is that it's
18 the compliance department's job.

19 Q. Aside from understanding that
20 it's the compliance department's job to
21 protect against unauthorized transmission
22 of confidential information or trade
23 secrets, do you have any understanding as
24 to what steps Brevet takes to ensure
25 against such transmission?

1 Johnny Lan

2 A. I can't speak to that.

3 MR. DUMAIN: Not withstanding
4 that it's 12:38, I think we're about
5 to turn to a different subject.
6 Maybe, we'll break two minutes earlier
7 than I had said for lunch, if that's
8 agreeable to everyone?

9 MR. UNDERWOOD: We'll suffer.

10 MR. DUMAIN: How long would you
11 like to take?

12 MR. UNDERWOOD: Hang on a
13 second.

14 Let's take an hour.

15 MR. DUMAIN: Can I get a time
16 stamp on the record?

17 VIDEOGRAPHER: Once we go off
18 the record, I'll give you an accurate
19 time.

20 MR. DUMAIN: Terrific. Thank
21 you.

22 VIDEOGRAPHER: The time is 12:39
23 p.m. and we're going off the record.

24 (Discussion held off the
25 record.)

1 Johnny Lan

2 MR. UNDERWOOD: Tracie, just to
3 give you a head's up, I would like to
4 get a rough transcript when you can
5 provide one at the end of this
6 proceeding. As soon as you can get
7 it, of course, understanding it's
8 Friday.

9 THE REPORTER: Okay.

10 (Whereupon, a lunch recess was
11 taken at this time.)

12 VIDEOGRAPHER: The time is 1:39
13 p.m. We're back on the record.

14 Q. Good afternoon, Mr. Lan; how are
15 you?

16 A. I'm well. And yourself?

17 Q. Good. Same to you.

18 I'm going to ask, and so now I
19 will, were you involved in obtaining a
20 Dell OptiPlex computer for Mr. Iacovacci's
21 home in 2015?

22 A. Yes.

23 Q. As you recall, was that a
24 replacement for a different Brevet
25 provided computer that had been in Mr.

1 Johnny Lan

2 Iacovacci's home?

3 A. I believe, it was.

4 Q. But you don't recall expressly
5 one way or the other?

6 A. No.

7 Q. Do you recall whether you
8 personally took the OptiPlex to Mr.
9 Iacovacci's house in 2015 and installed
10 it?

11 A. I do not believe I did.

12 MR. UNDERWOOD: Could we go off
13 the record for one minute?

14 MR. DUMAIN: Sure.

15 VIDEOGRAPHER: Sure. The time
16 is now 1:40 p.m. and we're going off
17 the record.

18 (Discussion held off the
19 record.)

20 VIDEOGRAPHER: The time is 1:41
21 p.m. We're back on the record.

22 Q. Mr. Lan, could you take a look
23 again at your November 17, 2017 affidavit,
24 which, I believe, has been marked Exhibit
25 4?

1 Johnny Lan

2 Are you there?

3 A. Yes.

4 Q. Look at paragraph six, the first
5 sentence.

6 Do you see it says "after
7 discussing Iacovacci's computer needs with
8 him and receiving Douglas Monticciolo's
9 approval to acquire through the firm a new
10 desktop for Iacovacci's home use, I
11 ordered a Dell OptiPlex desktop computer
12 on February 2015;" do you see that?

13 A. Yes.

14 Q. Can you, please, tell me what
15 you mean by "discussing Iacovacci's
16 computer needs with him?"

17 A. At this point, I cannot recall
18 any specific details of that discussion.

19 Q. Do you recall whether Mr.
20 Iacovacci's computer needs were business
21 related, family related, or both?

22 A. I do not recall, no.

23 Q. Do you recall whether Mr.
24 Iacovacci required two DVD drives on his
25 computer?

1 Johnny Lan

2 A. Sitting here today, I do not
3 recall that detail.

4 MR. DUMAIN: Let's mark Lan
5 Exhibit 7 a document labeled Brevet
6 150533.

7 (Whereupon, Plaintiff's Exhibit
8 7, 150533 was marked, for
9 identification, as of this date.)

10 A. By the way, after seeing the
11 excerpt I just looked at --

12 Q. Let me ask you a question; okay?

13 A. Okay.

14 Q. Have you looked at this e-mail?

15 A. I have looked at it, yeah.

16 Q. Does this e-mail refresh your
17 recollection that Mr. Iacovacci had
18 requested two DVD drives for his computer?

19 A. It does not refresh my
20 recollection, no.

21 Q. Is there any business reason in
22 2015 that Mr. Iacovacci would have needed
23 two DVD drives in his home computer?

24 A. Sitting here today, I do not
25 recall.

1 Johnny Lan

2 Q. Is there anything that you can
3 think of, as you sit here today, as you
4 understand, what Mr. Iacovacci's job was,
5 in 2015?

6 A. I could think of potential
7 reasons, but I would rather not speculate.

8 Q. In 2015, were there any Brevet
9 work stations that had two DVD drives?

10 A. Sitting here today, I cannot
11 recall if there was.

12 Q. Do you see the e-mail states at
13 the top of the Exhibit, among other
14 things, "if you get it shipped to the
15 office first though I can most likely add
16 a second DVD drive for you, otherwise,
17 we'll just ship it directly to your home;"
18 do you see that?

19 A. Yes, I see it.

20 Q. Was it typical to have computer
21 equipment shipped directly to employees'
22 homes during this time period?

23 A. Sitting here today, I do not
24 recall if there was specific -- if that
25 was a normal or not.

1 Johnny Lan

2 Q. It was not so normal that you
3 remember it being a common practice,
4 correct?

5 MR. UNDERWOOD: Object to the
6 form of the question.

7 A. Sorry. Could you repeat that?

8 Q. Can I withdraw it.

9 Let's take a look again at Lan
10 Exhibit 4, your affidavit. If you could
11 turn to page eight of the PDF, which is
12 Exhibit A to the affidavit.

13 I'm going to focus your
14 attention on the e-mail you wrote at 5:43
15 on February 3, 2015.

16 A. Okay.

17 Q. Can you tell from the chain who
18 you were sending this e-mail to, this 5:43
19 e-mail?

20 A. By looking at this document, no,
21 it doesn't appear to have the recipients
22 listed.

23 Q. There's an e-mail further up in
24 the chain from Mr. Monticciolo and copy to
25 Mark Callahan suggest to you that you are

1 Johnny Lan

2 corresponding with those two individuals?

3 A. That's what it appears like.
4 Like looking at the document.

5 Q. Do you see your e-mail says,
6 among other things, "Paul said that you
7 guys approved to acquire through the firm
8 a new desktop for his home use;" do you
9 see that?

10 A. Yes.

11 Q. Do you know what the words
12 "approved to acquire through the firm"
13 mean in the context of that e-mail?

14 A. I believe, it means for the firm
15 to purchase the computer.

16 Q. Were you, as you understand it,
17 quoting Mr. Iacovacci's words in this
18 e-mail?

19 A. No, I don't believe I was
20 attempting to quote him verbatim.

21 Q. Do you think you were intending
22 to convey the substance of what he said?

23 A. Sitting here today, I'm not sure
24 or remember.

25 Q. If you could turn back, I guess,

1 Johnny Lan

2 we're still looking at your affidavit, but
3 scroll back up to paragraph seven, which
4 is on page three of the PDF?

5 A. Okay.

6 Q. In the first paragraph you state
7 "the computer was delivered to Brevets'
8 offices where I configured it to Brevets'
9 specifications;" do you see that?

10 A. Yes.

11 Q. What was the purpose of
12 configuring it to Brevets' specifications?

13 A. I believe, that meant installing
14 the standard sort of set of Brevet
15 software to enable Brevet work.

16 Q. Do you recall what version of
17 the Windows operating system was installed
18 on this computer?

19 A. I believe, it was Windows 7.

20 Q. Do you know if Mr. Iacovacci
21 upgraded the computer to Windows 10?

22 A. What was the beginning part of
23 that question?

24 Q. Do you know if Mr. Iacovacci
25 upgraded the operating system to Windows

1 Johnny Lan

2 10?

3 A. I vaguely recall Mr. Iacovacci
4 reaching out to me at one point and
5 indicating that his computer may have
6 automatically upgraded itself to Windows
7 10.

8 Q. Is your recollection that he
9 called you or sent you an e-mail to that
10 effect?

11 A. I can't remember the form of
12 communication.

13 Q. Is an automatic update
14 something, in your experience, that could
15 have happened on a Windows systems in
16 2015?

17 A. Yes.

18 Q. Further into paragraph seven you
19 state that your standard business practice
20 was to also "install two different remote
21 access programs, LogMeIn and GoToMyPC,"
22 correct?

23 A. Yes. I see that's what it says.

24 Q. Do you know whether or not you,
25 in fact, installed LogMeIn on Mr.

1 Johnny Lan

2 Iacovacci's computer?

3 A. When you say "Mr. Iacovacci's
4 computer," are you referring to the Brevet
5 computer that was deployed to his home?

6 Q. Let me ask the question again.

7 Do you know whether you, in
8 fact, installed the LogMeIn program on the
9 Dell OptiPlex that we've been discussing?

10 A. Yes.

11 Q. And did you?

12 A. Yes.

13 Q. And is it your testimony that
14 you installed that LogMeIn software at the
15 same time that you configured the computer
16 with Outlook, Word, Excel, Power Point,
17 Kaspersky?

18 THE REPORTER: And what was the
19 last thing you said?

20 MR. DUMAIN: K-A-S-P-E-R-S-K-Y.

21 A. At this point, I couldn't tell
22 you for sure that all of this happened
23 within the same short span amount of time,
24 but, I believe, these software programs
25 were all installed, essentially, during

1 Johnny Lan

2 the same attempt to configure the
3 computer.

4 Q. That's what you believe?

5 A. Yes.

6 Q. Do you know whether Mr.
7 Iacovacci, in fact, purchased LogMeIn for
8 himself for installation on the Dell
9 OptiPlex?

10 MR. UNDERWOOD: Object to the
11 form of the question.

12 A. I have no idea if Mr. Iacovacci
13 purchased LogMeIn on his own at that
14 point. All I know is that I installed
15 LogMeIn onto the computer and registered
16 it under Brevets' LogMeIn account.

17 Q. Paragraph seven does not state,
18 does it, sir, that you installed LogMeIn
19 on the Dell OptiPlex?

20 A. No. It doesn't appear to.

21 Q. But you are nevertheless certain
22 that you did so?

23 A. Yes.

24 Q. You executed this affidavit in
25 2017, correct?

1 Johnny Lan

2 A. That's the date on the
3 affidavit.

4 Q. Look at paragraph eight. You
5 state that "in configuring Brevet
6 computers for home use by employees, I
7 would also typically install VPN
8 software;" it goes on, correct?

9 A. Yes.

10 Q. There you state that you're not
11 able to determine whether or not, in fact,
12 you had installed VPN software on the
13 OptiPlex, correct?

14 A. Yes, that's what it says.

15 Q. Did Brevet maintain records in
16 2015 of the software that it installed on
17 the computers that were purchased for
18 principals and other employees to use in
19 their home?

20 A. I don't recall there being an
21 official record.

22 Q. Did Brevet, in 2015, maintain
23 written records of the software that was
24 installed on the Brevet home computers
25 that were in Brevets' offices?

1 Johnny Lan

2 A. Sitting here today, I don't
3 recall there being an official written
4 record of software installed.

5 Q. If I could focus your attention
6 on paragraph nine. The affidavit states
7 that you "setup two user accounts on the
8 computer, one called Paul, which was
9 intended for business use, and the second
10 called family;" do you see that?

11 A. Yes.

12 Q. Is that consistent with your
13 recollection?

14 A. Yes.

15 Q. You understood at the time that
16 this computer would be used for both
17 business and Mr. Iacovacci's family's
18 personal purposes?

19 A. Yes.

20 As a general rule, I would set
21 up the computers that way if I thought
22 that there was even a chance of that
23 happening.

24 Q. Why did you do that?

25 A. I believe, I discussed this

1 Johnny Lan

2 earlier, where I did not want any
3 unauthorized people to have access to the
4 Brevet information on those computers.

5 Q. You understood at the time
6 pursuant to Brevets' written policy that
7 Brevet computers were, Brevet owned
8 computers, were to be used only for Brevet
9 business purposes and only incidentally
10 personal purposes, correct?

11 A. I understand that, in general,
12 there -- Brevet computers were to be
13 primarily used for Brevet business.

14 Q. Did you say primarily?

15 A. Yes.

16 Q. Did Brevet travel laptops have
17 family accounts setup on them?

18 MR. UNDERWOOD: Objection to the
19 form of the question.

20 A. Can you identify what you mean
21 by Brevet travel laptops?

22 Q. Yes, absolutely. That was a
23 problematic question. Thank you.

24 Did Brevet have laptops that it
25 would loan to employees who were traveling

1 Johnny Lan

2 on business?

3 A. At which period of time are you
4 referring to?

5 Q. If it changed over time, then,
6 you can answer with respect to the
7 particular time period?

8 A. Sorry.

9 With respect to which particular
10 time period?

11 Q. Was there a period that Brevet
12 would loan laptops to its employees who
13 were traveling on business?

14 A. Yes, I believe, there was.

15 Q. Did those laptops have family
16 accounts setup on them?

17 A. No.

18 Q. Are you aware of any Brevet
19 owned laptop, excluding for these
20 purposes, the computers that may have been
21 provided to Brevet employees for use in
22 their home, that had family accounts on
23 them?

24 A. At present, I do not recall any.

25 Q. Moving on to paragraph 10, your

1 Johnny Lan

2 affidavit states, when you setup the
3 computer in February slash March 2015,
4 "neither of the two user accounts had full
5 administrative rights," correct?

6 A. That's what it says.

7 Q. Did that change at some point?

8 A. I believe, it did.

9 Q. What's your recollection?

10 A. My recollection was that after
11 having had the computer for a while, Mr.
12 Iacovacci constantly and persistently
13 hounded me to upgrade the privileges on
14 the family account.

15 Q. We're going to mark Lan
16 deposition Exhibits 8 and 9, I believe.

17 (Whereupon, Plaintiff's Exhibit
18 8, 150621 was marked, for
19 identification, as of this date.)

20 Q. The next one will be July 7th
21 2015 e-mail with the production number
22 Brevet 150621.

23 And Exhibit 9, will be an e-mail
24 with the same date with the production
25 number Brevet 150622.

1 Johnny Lan

2 (Whereupon, Plaintiff's Exhibit
3 9, 150622 was marked, for
4 identification, as of this date.)

5 Q. Do you see Exhibit 8, Mr. Lan?

6 A. Sorry. It's still loading up on
7 the screen.

8 Okay.

9 Q. Is this one of the e-mail
10 communications you're referring to?

11 A. Sitting here today, I cannot
12 recall this exact e-mail, but this
13 certainly appears to be.

14 Q. If you could take a look at
15 Exhibit 9, if it's loaded?

16 A. Yes.

17 Q. Do you recall this e-mail?

18 A. I do not recall the e-mail, no.

19 Q. Is it consistent with what you
20 were describing before?

21 A. Yes.

22 Q. Do you see that Mr. Iacovacci
23 seems to be saying that he would like to
24 have the work software removed if that was
25 an obstacle to his becoming administrator

1 Johnny Lan

2 of the computer; do you read the e-mail
3 that way?

4 MR. UNDERWOOD: Object to the
5 form of the question.

6 A. I cannot speak to exactly what
7 Mr. Iacovacci meant in the way that you're
8 asking.

9 Q. I'm asking how you understand
10 it?

11 A. Frankly, I don't understand it.

12 Q. Did you ultimately grant Mr.
13 Iacovacci administrator access to the Dell
14 OptiPlex?

15 A. I believe, I did.

16 Q. If you did, was that a violation
17 of company policy?

18 A. No, I do not view it that way.

19 Q. Did you ever give employees
20 administrator access to their work
21 stations in the office?

22 A. Sitting here today, I cannot
23 recall to be able to tell you for sure
24 that it never happened.

25 Q. Was allowing an employee to

1 Johnny Lan

2 install third-party software on the
3 employees' work station consistent with
4 Brevets' policy at the time?

5 MR. UNDERWOOD: Sorry. I missed
6 the end of that question. There was
7 some banging.

8 MR. DUMAIN: My apologies for
9 that.

10 Q. The question was, was allowing
11 employees to install software --

12 MR. DUMAIN: Sorry. If it
13 doesn't stop in a minute we'll take a
14 five minute break.

15 Q. Was allowing employees to
16 install third-party software on Brevet
17 owned computers consistent with Brevets'
18 policies at the time?

19 MR. UNDERWOOD: I'm sorry. It's
20 a little distracting.

21 MR. DUMAIN: Why don't we go off
22 the record for three minutes and see
23 if I can manage that problem.

24 VIDEOGRAPHER: The time is 2:12
25 p.m. and we're going off the record.

1 Johnny Lan

2 (Discussion held off the
3 record.)

4 VIDEOGRAPHER: The time is 2:13
5 p.m. We're back on the record.

6 MR. DUMAIN: Thank you for the
7 indulgence.

8 Q. Mr. Question, Mr. Lan, is
9 whether permitting an employee to install
10 third-party software on a Brevet owned
11 computer would have been consistent with
12 Brevets' policies at the time?

13 A. At the time, if we thought that
14 doing so wouldn't interfere with the
15 security of the computer, we would allow
16 it from time to time.

17 Q. Who would have to grant
18 permission for the installation of
19 third-party software?

20 A. There was no formal, you know,
21 process or hierarchy.

22 Q. We're going to mark now a
23 document as Lan deposition Exhibit 10.

24 (Whereupon, Plaintiff's Exhibit
25 10, software application list was

1 Johnny Lan

2 marked, for identification, as of this
3 date.)

4 Q. Mr. Lan, you're looking at a
5 list of software applications; do you see
6 it?

7 A. Yes.

8 Q. My question for you is, which,
9 if any, of these software applications
10 were third-party non Brevet owned software
11 applications?

12 A. What is the origin of this list?

13 Q. I'll represent to you that this
14 is a list of software applications from
15 the Dell OptiPlex.

16 A. At what point in time?

17 Q. With respect, Mr. Lan, it
18 doesn't really matter for purposes of my
19 question.

20 The question is whether you
21 recognize any of these applications as
22 being applications that would have been
23 installed by Brevet and were Brevet owned?

24 A. Number three. Perhaps, number
25 10, 16, 25.

1 Johnny Lan

2 Q. What about 24?

3 A. You're asking about software
4 that Brevet owned or just software that
5 Brevet would have installed?

6 Q. Why don't we do it in two parts.
7 First, software that Brevet
8 owned, and second, any additional software
9 that Brevet installed?

10 A. This list is clearly from a long
11 time ago. Sitting here today, I can only
12 tell you, off the top of my head, numbers
13 three, and 25, and perhaps, 16, would be
14 software that Brevet paid for. Some of
15 the other software, you know, are free.

16 Q. Is there any software on this
17 list that you know that Brevet would have
18 neither purchased nor installed?

19 A. Perhaps, but I cannot -- being
20 that this was from a long time ago and,
21 also, I'm not exactly sure what I'm
22 looking at here, so, I don't want to
23 speculate.

24 Q. You can't say for certain, for
25 example, that Brevet would have neither

1 Johnny Lan

2 owned nor installed an application called
3 Bible Study Six?

4 A. I'm fairly certain we didn't own
5 that software. I don't have any
6 recollection of helping install that
7 software, either. If you want to say for
8 absolute certainty, right, I had no part
9 in the assisting and installing any of
10 these, I can't say that for sure.

11 Q. We're going to mark as Lan
12 deposition Exhibit 11, the July 23, 2019
13 answer that you filed in this case.

14 (Whereupon, Plaintiff's Exhibit
15 11, 7-23-19 Answer was marked, for
16 identification, as of this date.)

17 Q. Is the document loaded?

18 A. Yes.

19 Q. If you could turn to paragraph
20 42, which is on page seven of the PDF.

21 A. Okay.

22 Q. What do you understand this
23 answer to be, to start?

24 This document?

25 A. This was also referred to -- I

1 Johnny Lan

2 would have to see paragraph 42 of the
3 complaint.

4 Q. Just focusing on the final
5 sentence, or final part of the long
6 sentence, that states "Iacovacci held a
7 superior position to defendant, Lan, at
8 Brevet and complained to defendant, Lan,
9 to grant Iacovacci administrative rights
10 to the computer, and as a subordinate
11 employee, defendant, Lan, acceded to
12 Iacovacci's demand to be granted
13 administrative rights to the computer;" do
14 you see that portion of paragraph 42?

15 A. Yes.

16 Q. Does that accurately describe
17 what happened as to the granting of
18 administrative rights to Mr. Iacovacci?

19 A. As best I can recall, that seems
20 accurate.

21 Q. Is it fair to say, in other
22 words, that you were acceding to the
23 wishes of your superior -- I know you
24 shied away from the word "superior" when
25 we talked earlier in the today, and I am

1 Johnny Lan

2 trying not to use it, but it's in your
3 pleadings -- let me withdraw all of that.

4 Fair to say you acceded to the
5 will of your superior in the hierarchy at
6 Brevet?

7 A. Sitting here today, I cannot
8 recall if that was the sole or primary
9 reason for acceding.

10 Q. Mr. Lan, if you wanted to log
11 into Mr. Iacovacci's home computer using
12 LogMeIn, would you need to know his
13 password?

14 A. Again, by Mr. Iacovacci's
15 computer, are you referring to the Brevet
16 computer that was at his home?

17 Q. With respect, Mr. Lan, we're not
18 going to solve the issue of who owns the
19 computer between you and me. That's not
20 the purpose of this.

21 So, yes, the only computer I
22 have been referring to is Mr.
23 Iacovacci's -- the OptiPlex computer at
24 Mr. Iacovacci's home. So, let me ask
25 again.

1 Johnny Lan

2 In order to log into the Dell
3 OptiPlex, did you need Mr. Iacovacci's
4 password?

5 A. When you say "Mr. Iacovacci's
6 password," are you referring to which
7 services password are you referring to?

8 Q. To log into the Dell OptiPlex
9 through LogMeIn, did you need Mr.
10 Iacovacci's personal LogMeIn credentials?

11 A. Yes. I would have had to have
12 the credentials for the LogMeIn account
13 attached to that computer.

14 Q. Could you have obtained those
15 credentials from anybody but Mr.
16 Iacovacci?

17 A. No. Not that I know of.

18 Q. Could you look at paragraph 11
19 of Exhibit 4, please.

20 A. Yes.

21 Q. This paragraph states that Mr.
22 Iacovacci at times provided his LogMeIn
23 password to you and that you retained that
24 password?

25 A. Could you repeat that?

1 Johnny Lan

2 Q. Does this paragraph state that
3 "Mr. Iacovacci, from time to time, would
4 provide his LogMeIn password" to you and
5 that you retained his password?

6 A. Yes. I retained the password to
7 the LogMeIn account.

8 Q. Where did you record Mr.
9 Iacovacci's passwords?

10 A. To be fair, I don't recall if I
11 simply retained it in my head or if I had
12 written it down anywhere.

13 Q. Do you retain the passwords of
14 LogMeIn passwords of other Brevet
15 employees?

16 A. I cannot recall for certain, but
17 it's certainly possible.

18 Q. I didn't mean to cut you off.
19 Did you disclose to Mr.
20 Iacovacci that you were retaining his
21 LogMeIn password?

22 A. I don't recall explicitly
23 talking about that, no.

24 Q. Do you think Brevet employees
25 understood that you might retain their

1 Johnny Lan

2 LogMeIn passwords?

3 A. I think, Brevet employees,
4 through the process -- through the due
5 course of supporting the employees every
6 day, they certainly would have, I would
7 think -- I don't like to speculate on what
8 other people think, but in this case, I
9 would think it's reasonable that people
10 would expect that if the passwords that
11 they told me in my support of them is
12 retained sometimes.

13 Q. Did you ever urge Brevet
14 employees to change their passwords that
15 they provided to you so their personal
16 information could be kept secured?

17 A. No.

18 Q. Let's mark the next Exhibit, Mr.
19 Lan's February 16, 2021 affidavit.

20 (Whereupon, Plaintiff's Exhibit
21 12, 2-16-21 Lan affidavit was marked,
22 for identification, as of this date.)

23 A. Could I request that we take a
24 short break?

25 Q. Sure. 10 minutes work?

1 Johnny Lan

2 MR. UNDERWOOD: We're willing to
3 go five.

4 MR. DUMAIN: Five is even
5 better.

6 VIDEOGRAPHER: The time is 2:34
7 p.m. and we're going off the record.

8 (Discussion held off the
9 record.)

10 VIDEOGRAPHER: The time is 2:40
11 p.m. We're back on the record.

12 Q. Mr. Lan, I think, when we marked
13 the document I may have said February 16,
14 2020.

15 But for the record, we're
16 looking now at an affidavit dated February
17 16, 2021; is that correct?

18 A. Yes.

19 Q. Did you draft this affidavit?

20 A. Are you asking if I drafted it
21 on my own?

22 Q. What was the process for
23 drafting this affidavit?

24 A. I conferred with counsel.

25 Q. Is that the end of the answer?

1 Johnny Lan

2 A. Yes.

3 Q. After you conferred with
4 counsel, counsel drafted the affidavit,
5 correct?

6 MR. UNDERWOOD: Object to the
7 form of the question.

8 A. Yes, I believe so.

9 Q. Could you look at paragraph two?

10 A. Okay.

11 Q. Paragraph two states, in part,
12 "Brevet tries to keep its computer" -- let
13 me start again.

14 Paragraph two states, in part,
15 "in general, Brevet tries to keep its
16 computers up to date and configured with
17 the latest software and system updates,"
18 correct?

19 A. Yes.

20 Q. What steps did Brevet take to
21 keep the Dell OptiPlex we've been
22 discussing configured with the latest
23 software and system updates?

24 A. As I stated before, I generally
25 try to ensure that the automatic updates

1 Johnny Lan

2 switches, so to speak, were turned on, and
3 but if I, you know, happen to see a system
4 or software that was out of date, I
5 generally try to manually make it perform
6 the update.

7 Q. Were you able to keep track of
8 whether the system, or systems or
9 software, were up to date for computers
10 that were not connected to the Brevet
11 network?

12 A. Best I can recall, that was
13 difficult to accomplish during the period
14 of time that we're discussing.

15 Q. To be clear, the period of time
16 we're discussing is between February,
17 March 2015, when Mr. Iacovacci was
18 provided with the Dell OptiPlex and
19 October of 2016, when he left Brevet?

20 A. Yes.

21 Q. If you could look now at
22 paragraph three.

23 You say "virtually, all of
24 Brevets' computers, including all of those
25 in the office and most of the Brevets'

1 Johnny Lan

2 owned computers used by Brevet employees
3 outside of the office, are configured
4 consistently," correct?

5 A. Yes.

6 Q. What does configured
7 consistently mean in the context of this
8 sentence?

9 A. I believe, it means having the
10 same core suite of software installed, as
11 I stated earlier.

12 Q. In your view, was the Dell
13 OptiPlex configured consistently with the
14 Brevet work stations that could be found
15 in Brevets' offices?

16 A. In terms of the software that
17 was installed, yes.

18 Q. In what way was it not
19 configured consistently?

20 A. Sitting here today, it's tough
21 for me to think off the top of my head
22 what all the differences were.

23 Q. Were most Brevet computers
24 configured with a family account?

25 A. No.

1 Johnny Lan

2 Q. Were you aware of any other
3 Brevet computers at that time that had a
4 family account, by "at that time," I mean,
5 between February 2015 and October of 2016?

6 A. Yes.

7 Q. Which ones were those?

8 A. One particular one I'm aware of
9 is a computer that was deployed to Mark's
10 home, Mark Callahan's home.

11 Q. Who configured that computer?

12 A. I did.

13 Q. Did Mr. Callahan ask you to
14 create a family account or did you do it
15 on your own?

16 A. I believe, I did it, consistent
17 with my methodology back then.

18 Q. Did you have any understanding
19 at the time with respect to whether and
20 the extent to which Mr. Callahan's family
21 would be using the computer?

22 A. No, I don't believe I had any
23 idea as to extent or frequency.

24 Q. Did you have any understanding
25 at all with respect to whether

1 Johnny Lan

2 Mr. Callahan's family would be using the
3 computer?

4 A. I did not.

5 Q. When you were in the process of
6 obtaining the Dell OptiPlex for Mr.
7 Iacovacci, you were aware that Mr.
8 Iacovacci's children would use the Dell
9 OptiPlex for the purposes of home
10 schooling, correct?

11 A. No. No.

12 Q. You did not know that?

13 A. Again, I wouldn't have known or
14 had any real expectations of the frequency
15 or degree of personal use.

16 Q. In your November 2017 affidavit,
17 you provided sworn testimony, correct,
18 that you discussed Mr. Iacovacci's
19 computer needs with him in connection with
20 obtaining the Dell OptiPlex?

21 A. I see that's what it says.

22 Q. You executed this affidavit
23 under penalty of perjury, correct?

24 A. Yes.

25 Q. Do you have any reason to

1 Johnny Lan

2 believe your memory now of these events in
3 2015 is better than your memory in 2017 of
4 these events?

5 A. No.

6 Q. Returning again to your February
7 2021 affidavit. If you could look at
8 paragraph four. Let me know when you've
9 done so?

10 A. Okay.

11 Q. Does this statement in the
12 affidavit make reference to the laptop
13 that you were referring to in your
14 testimony a few moments ago that had been
15 issued to Mr. Callahan?

16 A. Yes.

17 Q. In your testimony -- in
18 paragraph four of your affidavit, you
19 state that you were able to identify a
20 laptop that had been previously used by
21 Mr. Callahan in the 2016 timeframe, and to
22 your knowledge, had not been updated since
23 around 2016; is that correct?

24 A. Yes.

25 Q. Did you do anything to determine

1 Johnny Lan

2 whether the laptop had been updated since
3 2016?

4 A. I didn't do anything proactive
5 to determine whether it's been updated,
6 per se. The basis of that statement was
7 the fact that I had placed the laptop into
8 my drawer.

9 Q. I didn't mean to cut you off.

10 A. Sorry.

11 Yes, since Mr. Callahan returned
12 it, it's been kept in my drawer,
13 basically.

14 Q. Is there a reason it was kept in
15 your drawer since Mr. Callahan had
16 returned it?

17 A. It was a laptop that we were not
18 intending to redeploy.

19 Q. Why?

20 A. Well, it was quite old at that
21 point.

22 Q. Why didn't you have it
23 liquidated?

24 A. We don't have a practice of
25 liquidating our IT equipment on an ongoing

1 Johnny Lan

2 basis. Typically, when we've moved
3 offices or, you know, had a large change
4 in the equipment.

5 Q. Why then was this Callahan
6 laptop the only 2016 era laptop you were
7 able to identify?

8 A. I don't know.

9 Q. Was it subject to a litigation
10 hold?

11 A. Not that I recall.

12 Q. Does Brevet have a procedure for
13 retaining computer equipment that's
14 subject to litigation hold?

15 A. If you're referring to some kind
16 of formal procedure, I'm not sure that
17 I'm -- I'm not sure there is one, but we
18 certainly would preserve things that are
19 subject to, you know, a litigation hold.

20 Q. What is the status of Mr.
21 Iacovacci's Brevet office work station
22 right now?

23 A. I do not have that information.

24 Q. Who would?

25 A. I don't know. I don't know if

1 Johnny Lan

2 anybody would.

3 Q. Who in Brevet is responsible for
4 maintaining hardware and hard drives that
5 are subject to a litigation hold?

6 MR. UNDERWOOD: Object to the
7 form of the question.

8 A. I'm not aware that any specific
9 person is designated as responsible for
10 that. I would think any employee that
11 comes into knowledge of a litigation would
12 have that responsibility.

13 Q. Just to be absolutely clear, you
14 don't know what happened to Mr.
15 Iacovacci's work station that Mr.
16 Iacovacci was using at the time he left
17 Brevet in October of 2016?

18 MR. UNDERWOOD: Object to the
19 form of the question.

20 A. Correct. I don't know where it
21 is.

22 Q. And you don't know who would
23 know?

24 A. I do not.

25 Q. Have you had any contact with

1 Johnny Lan

2 that computer that you can recall since
3 Mr. Iacovacci left Brevet in October 2016?

4 A. I cannot recall like a
5 specific -- I can't recall anything
6 specifically. Generally, when an employee
7 leaves, we generally repurpose the
8 computer after making a backup of the data
9 on it.

10 Q. Where is that the backup saved?

11 A. It's typically saved into the
12 what we call -- it's essentially a sort of
13 space on the network reserved for that
14 employee.

15 Q. Do you take an image of the
16 entire hard drive?

17 A. I do not.

18 Q. What do you do?

19 A. I review -- I do a review of any
20 data that's -- that may be only on the
21 computer and not on the network, and I
22 copy anything that I find in that category
23 onto the network.

24 Q. How do you determine what
25 information might not be on the network?

1 Johnny Lan

2 A. If the information is sitting in
3 certain directories that are local to the
4 computer.

5 Q. So, you make a copy of all local
6 drives?

7 A. Not the entire drives, no. Only
8 business related data.

9 Q. How do you determine what's
10 business related and what's personal?

11 MR. UNDERWOOD: Object to the
12 form of the question.

13 MR. DUMAIN: Let me withdraw it.

14 Q. How do you determine what's
15 business related and what's not business
16 related?

17 A. It's more that I attempt -- I do
18 my best efforts to identify what seems to
19 be business related. If it's not, then, I
20 consider it not business related.

21 I just want to clarify here,
22 it's not like there's only two kinds of
23 files that can exist. It's not there's
24 only business or personal files. There's
25 also system files that would have no

1 Johnny Lan

2 relevance and no need to be backed up.

3 Q. Just to be clear, you personally
4 don't know what became of Mr. Iacovacci's
5 work station, correct?

6 A. The physical work station, I'm
7 not sure, no.

8 Q. Did you personally backup the
9 business related information on Mr.
10 Iacovacci's work station before it was
11 either repurposed or disposed of?

12 A. Sitting here today, I couldn't
13 tell you for certain if it was me
14 personally.

15 Q. If it was not you, who would it
16 have been?

17 A. Likely, my colleague, Igor
18 Koyfman.

19 Q. Mr. Lan, did you come to learn
20 at some point that Mr. Iacovacci intended
21 to retire from Brevet?

22 A. At any point?

23 Q. Yes, at any point?

24 A. I suppose, yes.

25 Q. How did you learn that he had

1 Johnny Lan

2 decided to retire?

3 A. To the best of my recollection,
4 it's the most recent way that I can
5 remember is through the course of this
6 litigation.

7 Q. Are you stating that you did not
8 know before you came to learn in this
9 litigation that at some point in 2016 Mr.
10 Iacovacci had announced his intent to
11 retire from Brevet?

12 A. No. I'm saying that's the most
13 recent example that I can think of.

14 Q. But you can't recall the first
15 time that you heard that Mr. Iacovacci
16 intended to retire?

17 A. I cannot, no.

18 Q. When an employee announces the
19 employee's departure from Brevet, does
20 Brevet take steps to restrict the
21 employee's access to company data in
22 advance of their departure?

23 A. I don't know if I could speak to
24 that. Usually, senior management or human
25 resources lets me know when somebody is

1 Johnny Lan

2 either leaving or being terminated and we
3 generally shutdown the access at the time
4 of termination?

5 Q. Is that a matter of practice or
6 a matter of policy?

7 MR. UNDERWOOD: Object to the
8 form of the question.

9 A. I don't know.

10 Q. Are you aware of any written
11 policy that lays out how and when an
12 employees' access to Brevets' systems and
13 information should be restricted upon
14 their departure from the firm?

15 A. I cannot recall a specific
16 written policy at this point in time.

17 Q. The next Exhibit which, I
18 believe, will be Exhibit 13, is a document
19 labeled Brevet New, B-R-E-V-E-T-N-E-W,
20 026779.

21 (Whereupon, Plaintiff's Exhibit
22 13, 026779 was marked, for
23 identification, as of this date.)

24 Q. Can you review it from the
25 bottom up and let me know when you've

1 Johnny Lan

2 completed it?

3 A. Okay.

4 Q. Do you recall this e-mail
5 exchange?

6 A. I do not.

7 Q. Do you have any recollection of
8 what Mr. Monticciolo is asking you to
9 learn on the PC front on or about January
10 25, 2016?

11 A. Sitting here today, I cannot
12 recall.

13 Q. Do you know why Mr. Monticciolo
14 asked you to bring the hard drive with the
15 original files from Mr. Iacovacci's
16 computer to Mr. Monticciolo's office?

17 A. No, I do not recall that.

18 Q. Do you recall any other instance
19 in which Mr. Monticciolo asked you to
20 provide to him the hard drive from the
21 computer of a former Brevet employee?

22 A. No, I do not recall at this
23 time.

24 Q. I should clarify, at the time of
25 this e-mail, Mr. Iacovacci was not a

1 Johnny Lan

2 former Brevet employee, he was an active
3 Brevet employee. Let me ask a different
4 question.

5 Do you recall, as you sit here
6 today, Mr. Monticciolo ever asking you to
7 bring to him the hard drive from a
8 computer of a Brevet employee?

9 A. No, at this point in time, I do
10 not recall.

11 Q. Did Mr. Monticciolo have any
12 computer hardware related responsibilities
13 at Brevet in the January 2016 timeframe?

14 A. I do not recall at this time.

15 Q. But you might have?

16 A. No. I just don't know.

17 Q. Does this strike you as an
18 unusual request?

19 A. Again, I do not recall this
20 e-mail interaction.

21 Q. As you sit here today, does it
22 seem unusual to you that the senior
23 principal of Brevet would ask you to drop
24 off a computer hard drive of a current
25 Brevet employee?

1 Johnny Lan

2 A. It's not my job, or place, to,
3 you know, to think about that.

4 Q. With respect, sir, it's your job
5 to answer the questions. So, if you have
6 a view that is it unusual, you should
7 answer truthfully?

8 A. Right.

9 Also, because I want to give
10 accurate and truthful testimony, I would
11 rather not speculate on how I would view
12 or feel on a hypothetical.

13 Q. But you don't doubt this
14 happened, do you, sir?

15 MR. UNDERWOOD: Object to the
16 form of the question.

17 A. I mean, I see what it says in
18 the e-mail.

19 Q. We're going to mark Lan
20 deposition Exhibit 14. It's an e-mail
21 exchange with the Bates labeled Brevet New
22 029916.

23 (Whereupon, Plaintiff's Exhibit
24 14, 029916 was marked, for
25 identification, as of this date.)

1 Johnny Lan

2 Q. Have you reviewed the document,
3 sir?

4 A. It didn't come up yet. Okay.
5 What would you like me to do?

6 Q. Have you read the document?

7 A. Yes.

8 Q. Now, we're going to mark
9 deposition Exhibit 15, an Excel file,
10 Bates Brevet New 029918, which is the
11 attachment to this e-mail.

12 (Whereupon, Plaintiff's Exhibit
13 15, Brevet New 029918 was marked, for
14 identification, as of this date.)

15 A. Okay.

16 Q. Do you recall this e-mail
17 exchange, sir?

18 A. No, at this time I can't say
19 that I do.

20 Q. Do you see that Mr. Callahan
21 wrote to you on February 26th of 2016
22 asking you to download Mr. Iacovacci's
23 contacts into Excel and then send them to
24 Mr. Callahan, Mr. Monticciolo,
25 Mr. Sherman, and Mr. O'Keefe, correct?

1 Johnny Lan

2 A. Yes, I see that.

3 Q. And you did that, right?

4 A. I don't have a specific
5 recollection of having done that.

6 Q. Do you doubt having done that
7 looking at this e-mail exchange?

8 A. I don't have a reason to doubt.

9 Q. Do you recall informing Mr.
10 Iacovacci that you had been asked to
11 download his contacts and provide them to
12 Mr. Callahan and others?

13 A. No. I do not recall that.

14 Q. Did Mr. Callahan regularly ask
15 you to download Brevet employees' contacts
16 without those employees' notice and
17 provide those contacts to Mr. Callahan and
18 others?

19 MR. UNDERWOOD: Object to the
20 form of the question.

21 A. I do not recall if that was ever
22 a regular occurrence or not.

23 Q. Can you recall any other
24 instance in which Mr. Callahan wrote to
25 you and asked you to download contacts

1 Johnny Lan
2 from another current Brevet employee
3 without notice to that employee and to
4 provide them to Mr. Callahan?

5 MR. UNDERWOOD: Object to the
6 form of the question.

7 A. No, I do not recall that.

8 Q. Can you think of any other
9 instance in which Mr. Callahan wrote to
10 you and asked you to download files of
11 other Brevet employees without notice to
12 those employees and to provide them to
13 Mr. Callahan?

14 MR. UNDERWOOD: Object to the
15 form of the question.

16 A. At this present moment, I cannot
17 recall.

18 Q. Do you know what Mr. Callahan
19 did with those contact lists?

20 A. I can't speak to what
21 Mr. Callahan did.

22 Q. Mr. Lan, could you open up
23 deposition Exhibit 15, the Excel
24 spreadsheet.

25 Just tell me, for the record,

1 Johnny Lan

2 how many lines of data there are in the
3 file?

4 A. This appears to be a large file
5 and the way we're looking at it on the
6 screen it's difficult for me to be able to
7 scroll to the bottom and tell you the
8 number.

9 Q. I'll represent to you that it's
10 6765 lines of data. If you accept that
11 representation, as you understand what
12 happened here, is it accurate to say that
13 you downloaded, without Mr. Iacovacci's
14 notice, over 6700 contacts that he had on
15 his computer and provided them to
16 Mr. Callahan?

17 MR. UNDERWOOD: Object to the
18 form of the question.

19 A. I'm not sure I understand the
20 relevance of the number of records, but as
21 I said before, I do not recall whether I
22 informed Mr. Iacovacci of this contacts
23 download.

24 MR. DUMAIN: Move to strike as
25 nonresponsive.

1 Johnny Lan

2 Q. Take a look at deposition
3 Exhibit 4, specifically, paragraph five,
4 again.

5 Did you come to learn that one
6 day Mr. Iacovacci had been terminated?

7 A. Could you repeat that?

8 I missed the beginning of that
9 question.

10 Q. Did you come to learn that Mr.
11 Iacovacci had been terminated?

12 A. What's the period of time that
13 you're referring to?

14 Q. Why don't we start with ever?

15 A. Yes, I believe, I understand
16 that he's terminated.

17 Q. Do you recall when he was
18 terminated?

19 A. According to this, October 14,
20 2016.

21 Q. By "according to this," you
22 mean, your sworn affidavit, correct?

23 A. Yes.

24 Q. According to your own sworn
25 affidavit Mr. Iacovacci was terminated on

1 Johnny Lan

2 October 14, 2016, correct?

3 A. Yes.

4 Q. Is it also true that on that
5 day, you were instructed to deliver a
6 letter to Mr. Iacovacci's apartment and to
7 retrieve what you've characterized as the
8 Brevet owned Cisco desktop, phone, and
9 computer from Mr. Iacovacci?

10 A. Yes.

11 Q. Had you ever before been
12 dispatched to retrieve hardware from a
13 Brevet employee who had been terminated?

14 A. Sitting here today, I can't
15 recall if I have.

16 Q. You can't recall any other
17 instance in which you had been dispatched
18 to retrieve hardware from a Brevet
19 employee who had been terminated, correct?

20 A. Correct.

21 Q. Do you recall what happened when
22 you got to Mr. Iacovacci's home?

23 A. I recall asking for --
24 delivering the envelope, as instructed,
25 and asking for the company equipment to be

1 Johnny Lan

2 returned, as instructed.

3 Q. Are you done?

4 A. Yes.

5 Q. Do you recall, as you sit here
6 today, what Mr. Iacovacci said?

7 A. Yes.

8 Q. What did Mr. Iacovacci say?

9 A. Again, this is not verbatim, but
10 I recall Mr. Iacovacci saying that he
11 could give back the phone, but not the
12 computer, at least not that day.

13 Q. What do you recall about Mr.
14 Iacovacci's demeanor at that time?

15 A. I do not recall anything out of
16 the ordinary with his demeanor.

17 Q. Did you say anything else to
18 him?

19 A. Sitting here today, not that I
20 recall.

21 Q. What happened next?

22 A. We picked up the phone, or Mr.
23 Iacovacci turned over the phone, and we
24 left, returned to the office.

25 Q. What happened when you got back

1 Johnny Lan

2 to the office?

3 A. I do not recall.

4 Q. Did you tell anyone that Mr.
5 Iacovacci had not turned over the Dell
6 OptiPlex?

7 A. Yes, I believe, I communicated
8 that to Mark Callahan.

9 Q. Did you communicate that to him
10 in person, or by phone, or by e-mail?

11 A. At this point, I cannot recall
12 exactly.

13 Q. Can you recall Mr. Callahan's
14 reaction to that news?

15 A. No, I cannot.

16 Q. Did you make any further efforts
17 to retrieve Mr. Iacovacci's computer, by
18 which I mean, the Dell OptiPlex, from his
19 home?

20 A. No. I do not remember being
21 further instructed to attempt to collect
22 the computer.

23 Q. In your capacity as head of
24 technology, did you take any steps,
25 following Mr. Iacovacci's termination, to

1 Johnny Lan

2 restrict his access rights to Brevets'
3 systems?

4 A. Yes, I believe, I would have
5 gone through the standard procedure of
6 affording an employee from a technology
7 standpoint.

8 Q. What were the standard
9 procedures?

10 A. Generally, it would be to remove
11 the employees' access to Brevets' systems.
12 To make a backup of any business related
13 data on to the network. And to reset the
14 computer for repurpose, basically,
15 repurpose and reassign the computer.

16 Q. Did there come a time that you
17 used Mr. Iacovacci's LogMeIn credentials
18 to access the Dell OptiPlex?

19 A. Yes.

20 Q. How did that come about?

21 A. Could you clarify which period
22 of time are you talking about?

23 Q. After you delivered the letter
24 to Mr. Iacovacci on October 14th, did
25 there come a time that you accessed Dell

1 Johnny Lan

2 OptiPlex using Mr. Iacovacci's LogMeIn
3 credentials?

4 A. Yes.

5 Q. When was the first time after
6 Mr. Iacovacci's termination that you did
7 so?

8 A. I believe, it was a couple of
9 days after the termination.

10 Q. Who instructed you to do so?

11 A. Mark Callahan.

12 Q. Did he tell you in person or by
13 telephone?

14 A. Sitting here today, I cannot
15 recall the exact method of communication.

16 Q. Do you recall your reaction to
17 that instruction?

18 A. No, I do not.

19 Q. Mark Mr. Lan's February 28, 2020
20 affidavit.

21 (Whereupon, Plaintiff's Exhibit
22 16, Lan affidavit 2-28-20 was marked,
23 for identification, as of this date.)

24 Q. Do you see it in front of you
25 yet, Mr. Lan, or not?

1 Johnny Lan

2 A. No. It's still loading.

3 What Exhibit number is it
4 supposed to be?

5 Q. This will be 16.

6 A. It's still not showing up.

7 Q. Why don't we do that while it's
8 loading.

9 Would you, please, take a look
10 at Lan Exhibit 11.

11 A. Okay.

12 Q. If you now look at page 17 of
13 the PDF, looking at the paragraph under
14 the heading "as and for a second
15 affirmative defense?"

16 A. Yes.

17 Q. It says "any actions undertaken
18 by defendant, Lan, were taken upon
19 assurances that legal counsel for Brevet
20 had advised that such actions were lawful
21 and authorized. At all times relevant
22 hereto, defendant, Lan, was acting at the
23 direction of his employer, Brevet, and
24 with the understanding that those
25 directions had been approved by legal

1 Johnny Lan

2 counsel for Brevet;" do you see that?

3 A. I see it.

4 Q. My question for you is, at the
5 time you logged into the Dell OptiPlex and
6 downloaded files using Mr. Iacovacci's
7 LogMeIn credentials, were you acting with
8 the understanding and direction that you
9 had received to do so had been approved by
10 legal counsel for Brevet -- (broken
11 audio) --

12 A. Your picture is frozen.

13 MR. UNDERWOOD: You're muted now
14 and, I think, your question may have
15 been broke up a little bit. You
16 froze.

17 MR. DUMAIN: My apologies.

18 Q. My question again was, whether
19 at the time you logged into Mr.
20 Iacovacci's, to the Dell OptiPlex, using
21 Mr. Iacovacci's LogMeIn credentials, you
22 understood that the directions you had
23 been given to do so by your employer,
24 Brevet, had been approved by legal counsel
25 for Brevet?

1 Johnny Lan

2 A. Yes.

3 Q. Where did the understanding come
4 from that your conduct had been approved
5 by Brevets' legal counsel?

6 A. My recollection is, it came from
7 a conversation with Mr. Callahan.

8 Q. Did you finish your answer?

9 A. Yes.

10 Q. Do you recall asking
11 Mr. Callahan whether Brevets' lawyers had
12 signed off on the plan to log into Mr.
13 Iacovacci's computer or whether
14 Mr. Callahan volunteered that information?

15 A. Sitting here today, I cannot
16 recall the exact circumstances or
17 conversations that led to that.

18 Q. If you had not been given
19 assurances that the course of conduct that
20 you were about to undertake had been
21 approved by legal counsel for Brevet,
22 would you have participated in it?

23 MR. UNDERWOOD: Object to the
24 form of the question.

25 A. Again, I generally don't like to

1 Johnny Lan

2 speculate what I would or would not have
3 done. But in this case, yes, it was part
4 of my duties.

5 Q. So, as you sit here today, you
6 don't recall that advice as being
7 essential to your decision to follow Mr.
8 Callahan's direction?

9 MR. UNDERWOOD: Object to the
10 form of the question.

11 A. No. I do not recall that.

12 Q. Aside from Mr. Callahan, was
13 anyone else involved in the conversations
14 about using Mr. Iacovacci's LogMeIn
15 account to gain access to the Dell
16 OptiPlex and download files?

17 A. I don't know. My primary point
18 of contact with regard to that procedure
19 was Mr. Callahan.

20 Can I ask for a break?

21 Q. Sure.

22 Five minutes or 10 minutes?

23 THE REPORTER: Can we take 10?

24 MR. DUMAIN: Of course.

25 VIDEOGRAPHER: The time is 3:43

1 Johnny Lan

2 p.m. and we're off the record.

3 (Whereupon, a recess was taken
4 at this time.)

5 VIDEOGRAPHER: The time is 3:54
6 p.m. We're back on the record.

7 A. Before we continue I would like
8 to say something. I was thinking about it
9 during the break and earlier when I said
10 that I did not like to speculate, and I
11 don't want to speculate on what I would or
12 would not have done, knowing that legal
13 counsel had approved or not. I just want
14 to reiterate I don't want to speculate.
15 So I would like to leave it at that.

16 Q. We marked as Lan Exhibit 16, Mr.
17 Lan's February 28, 2020 affidavit.

18 A. Okay.

19 Q. Mr. Lan, do you recognize this
20 affidavit?

21 A. Yes.

22 Q. Do you recall when you prepared
23 it?

24 A. Not exactly.

25 Q. Do you recall what the process

1 Johnny Lan

2 for preparing this affidavit was?

3 A. As I said before, as is the case
4 with all of my affidavits in this case so
5 far, I conferred with counsel.

6 Q. And then, what?

7 A. Then, the affidavit was drafted
8 and finalized, then, executed.

9 Q. Could you look at paragraph
10 three?

11 Do you recognize that paragraph?

12 A. I see the paragraph.

13 Q. Do you recall drafting this
14 paragraph?

15 A. No. Sitting here today, I
16 cannot recall drafting the paragraph.

17 Q. You see again that it contains
18 language stating that you downloaded the
19 files from the Dell OptiPlex that's
20 referred to here with the understanding
21 that the directions you had been given to
22 do so by your supervisors at Brevet had
23 been approved by legal counsel for Brevet,
24 correct?

25 A. Yes.

1 Johnny Lan

2 Q. You signed this affidavit in
3 February of 2020, correct?

4 A. Yes.

5 Q. As you sit here today, can you
6 recall whether it was important to you
7 that you had been told that the course of
8 conduct that you were about to undertake
9 had been approved by Brevets' legal
10 counsel?

11 A. As I sit here today, no, I
12 cannot specifically recall whether that
13 was an important factor.

14 Q. Do you recall you testified this
15 morning that you did not think about the
16 legality of the course of conduct that you
17 were about to undertake before you
18 followed the directions of your
19 supervisors and downloaded files from the
20 Dell OptiPlex?

21 MR. UNDERWOOD: Object to the
22 form of the question.

23 A. Sitting here today, I cannot
24 recall as to what I was thinking of five
25 years ago.

1 Johnny Lan

2 Q. When you signed this affidavit
3 on February 28, 2020, was it the truth, as
4 you understood it?

5 A. Yes. It was my understanding.

6 Q. Mr. Lan, could you look at
7 paragraph eight of the affidavit.

8 A. Okay.

9 Q. You see that paragraph eight
10 states "in late September 2019 counsel
11 informed Brevet" -- and you were surprised
12 to learn -- "that the material you had
13 provided to StoneTurn included material
14 that Iacovacci had claimed was
15 privileged."

16 Let me withdraw it.

17 You may need to look at
18 paragraph seven and eight for the full
19 context, if you haven't.

20 A. Okay.

21 Q. So, my question is, why in
22 September 2019 were you surprised to learn
23 that material that you had provided to
24 StoneTurn, which included the files you
25 downloaded in 2016, included material that

1 Johnny Lan

2 Iacovacci had claimed was privileged?

3 A. I thought through the process
4 testifying in the case, legal counsel on
5 both sides, would have taken whatever
6 steps they needed to take to avoid such a
7 situation.

8 Q. So, you were surprised to learn
9 at that late point in the litigation there
10 might be privileged material that was
11 circulating among the parties; is that
12 your testimony?

13 A. Yes.

14 Q. Do you have access to the copies
15 of the files downloaded in 2016, as you
16 sit here today?

17 A. As the primary IT administrator,
18 yes.

19 Q. Does anyone else?

20 A. Not that I know of.

21 Well, I should also clarify
22 though that at least various parts of the
23 downloaded files have been produced by
24 plaintiff, or, actually, by both sides.
25 So, I can't speak to which legal counsel

1 Johnny Lan

2 have access to which copies.

3 Q. I'm asking a slightly different
4 question, which is simply this, who has
5 access to the copy of the files that has
6 been saved on Brevets' system?

7 A. Oh, and just me.

8 Q. Are you certain about that?

9 A. As much as I can be.

10 I was instructed by our counsel
11 to limit the access.

12 Q. Are you able to restrict access
13 rights of Mr. Callahan?

14 A. Yes.

15 Q. Are you able to limit the access
16 rights of Mr. Monticciolo?

17 A. Yes.

18 Q. Is there anyone who's able to
19 limit your access rights?

20 A. Yes.

21 Q. Who is that?

22 A. Our IT provider.

23 Q. Can we mark, please, as Lan
24 Exhibit 17, if that's available, the
25 November 17, 2017 affidavit of

1 Johnny Lan

2 Mr. Callahan?

3 (Whereupon, Plaintiff's Exhibit
4 17, 11-17-17 affidavit was marked, for
5 identification, as of this date.)

6 Q. Mr. Lan, when you have the
7 Exhibit ready, first, let me know if you
8 recognize the document?

9 A. I see that it is an affidavit
10 signed by Mark Callahan.

11 Q. Could you, please, read
12 paragraph five, and let me know when
13 you've completed it?

14 A. Okay.

15 Q. Focusing on the second full
16 sentence of the paragraph, which begins
17 with the word "review," toward the bottom
18 of the page.

19 I believe that it says, "review
20 of our Brevets' e-mail server showed that
21 on hundreds of occasions plaintiff
22 forwarded to his personal e-mail accounts
23 confidential e-mails about various
24 clients, potential clients, and
25 transactions, as well as thousands of

1 Johnny Lan

2 client contacts;" do you see that?

3 A. Yes.

4 Q. Were you involved in the review
5 of Brevets' e-mail server that
6 Mr. Callahan is referring to in this
7 paragraph five?

8 A. I do not believe so.

9 Q. As you sit here, you don't have
10 any recollection of being involved in this
11 review?

12 A. Correct. I don't.

13 Q. Based on your understanding of
14 Mr. Callahan's access rights to Brevets'
15 e-mail server, it would have been
16 possible, as you understand it, for
17 Mr. Callahan to have undertaken this
18 review himself?

19 A. As I stated earlier, senior
20 management and our compliance department
21 have access to our complete e-mail
22 archives, which they can access directly
23 on their own without my involvement.

24 Q. Do you have any understanding as
25 to whether or not Mr. Callahan makes a

1 Johnny Lan

2 practice of accessing that archive?

3 A. I'm afraid I can't speak to
4 that, as he has direct access, so --

5 Q. Would there be any record in the
6 system of Mr. Callahan's having accessed
7 the e-mail server to undertake this type
8 of review?

9 A. I am not certain if that
10 information is captured or to what degree
11 it is captured.

12 Q. If we could mark next as Lan
13 Exhibit 18, the October 15, 2019 responses
14 to plaintiff's amended fifth
15 interrogatories.

16 (Whereupon, Plaintiff's Exhibit
17 18, amended interrogatories was
18 marked, for identification, as of this
19 date.)

20 A. Okay.

21 Q. Do you see this document?

22 A. I see the document.

23 Q. Could you take a moment just to
24 look at it and let me know if you recall
25 having had any role in preparing it?

1 Johnny Lan

2 A. Can I confer with my attorney on
3 the question of privilege?

4 Q. You can.

5 If you need to confer to answer
6 my question, with respect to whether you
7 had a role in preparing this document, you
8 certainly can.

9 MR. UNDERWOOD: We'll be right
10 back.

11 VIDEOGRAPHER: Should we stay on
12 the record or go off?

13 MR. DUMAIN: I think, we can
14 stay on.

15 VIDEOGRAPHER: Okay.

16 (Whereupon, the witness and his
17 attorney left the Zoom.)

18 MR. UNDERWOOD: Could we have
19 the question back, please?

20 (Whereupon, the record was read
21 back by the reporter.)

22 A. Yes, I can.

23 Q. Did you have any role in
24 preparing this document?

25 MR. UNDERWOOD: Counsel, I'm

1 Johnny Lan

2 concerned that your question starts to
3 get into work product protection, to
4 the extent of the witness' particular
5 involvement with counsel in preparing
6 discovery responses. I think, you are
7 entitled to ask the witness what he
8 knows about the facts that may be set
9 forth here, but in terms of how
10 information made its way into the
11 interrogatory response, I think, is
12 covered by work product protection.

13 MR. DUMAIN: That's fine.

14 MR. UNDERWOOD: So, I'll let him
15 answer the question you just asked,
16 but I'm not going to let him get into
17 any details about it.

18 MR. DUMAIN: That's fine.

19 How about we do it this way:

20 Q. Have you seen this document
21 before today?

22 A. I might have. Honestly, I've
23 seen a lot of documents.

24 Q. Okay. If I could focus your
25 attention on interrogatory one, which

1 Johnny Lan

2 states, "identify and describe each
3 instance, including, dates and times in
4 which you accessed or gained entry into
5 the computer and/or the hard drive of the
6 computer;" and it goes on, do you see
7 that?

8 A. Yes. I see it.

9 Q. Are you aware of any instances
10 after October 18, 2016 where you gained
11 access to the Dell OptiPlex?

12 A. No, I'm not aware of any
13 instance.

14 Q. Are you aware of any instance
15 after October 18, 2016 when any Brevet
16 employee or agent gained access to the
17 Dell OptiPlex?

18 A. Sitting here today, I do not
19 recall the instances.

20 Q. If I could focus your attention
21 to the bottom of the chart on page five.
22 The entry 10-18-16, 12:59 a.m.?

23 A. Okay.

24 Q. Do you recall gaining access to
25 the OptiPlex at or about 1:00 a.m. on the

1 Johnny Lan

2 morning of October 18, 2016?

3 A. Sitting here today, I couldn't
4 confirm the exact time, but, yes, I do
5 recall that log in.

6 Q. Was it late in the evening?
7 I'm not trying to pin you down
8 to 12:59 a.m.

9 A. No.
10 I believe, it was toward the
11 evening.

12 Q. Do you recall whether you were
13 in the office or whether you were working
14 from home?

15 A. I believe, I was working from
16 home.

17 Q. Was anybody with you?

18 A. Not that I can recall.

19 Q. Were you in telephone contact
20 with anyone while you were gaining access
21 to the OptiPlex?

22 A. Not that I can recall.

23 Q. You see the third column in the
24 chart for this entry states "log in to
25 backup the computer after plaintiff failed

1 Johnny Lan

2 to return it in accordance with
3 defendant's regulatory obligations,
4 including, its obligations as an SEC
5 registered investment advisor;" do you see
6 that?

7 A. I see it.

8 Q. At or around the time that you
9 were gaining access to the OptiPlex and
10 downloading files from it, did
11 Mr. Callahan or anyone else say to you
12 that the reason you were doing it was to
13 comply with Brevets' regulatory
14 obligations as an SEC registered
15 investment advisor?

16 A. I'm sorry. I think, I missed
17 one or two of your words towards the end
18 of that question.

19 Q. Sure. I'll withdrew it and
20 state it again.

21 At or around the time that you
22 were obtaining access to the Dell
23 OptiPlex, on October 18, 2016, did anyone
24 say to you that the reason Brevet was
25 doing this, that is, obtaining access to

1 Johnny Lan

2 the OptiPlex and downloading files from
3 it, was to comply with Brevets' regulatory
4 obligations, including, its obligations as
5 an SEC registered investment advisor?

6 A. Sitting here today, not that I
7 can recall.

8 Q. When was the first time you can
9 recall hearing that the reason that Brevet
10 gained access to the OptiPlex and
11 downloaded files from it was to comply
12 with Brevets' regulatory obligations,
13 including, its obligations as an SEC
14 registered investment advisor?

15 A. Sitting here today, I really
16 couldn't tell you.

17 Q. What was your understanding of
18 the reason that you were being asked to
19 use Mr. Iacovacci's LogMeIn account to
20 gain access to the OptiPlex and download
21 files?

22 A. My understanding is that we were
23 attempting to do our standard process of
24 backing up business data upon an
25 employees' termination.

1 Johnny Lan

2 Q. How did you identify the files
3 to download when you gained access to the
4 OptiPlex at 12:59?

5 A. I generally browsed through the
6 computer file structure and looked for
7 anything that seemed like it was related
8 to Brevet.

9 Q. How did you determine whether
10 something seemed like it was related to
11 Brevet?

12 A. Based on the labels or text of
13 the folders, if it -- like, for example,
14 if it actually said the word Brevet, or if
15 it had the name of a known Brevet counter
16 party.

17 Q. Did you encounter any open
18 browsers when you logged in?

19 A. Yes.

20 Q. What did you do?

21 A. I saw that -- do you need a
22 minute?

23 I saw that there were -- their
24 Yahoo mail was opened. I recognized names
25 of counter parties related to Brevet, so,

1 Johnny Lan

2 I thought to take a photo of that screen.

3 Q. Is that the end of your answer?

4 A. Yes.

5 Q. Did you manipulate the browser
6 at all?

7 A. No. I don't remember
8 manipulating the browser.

9 Q. No, you didn't, or, no, you
10 don't remember having done it?

11 A. As we agreed earlier, everything
12 I'm testifying to today is to the best of
13 my ability to recall.

14 Q. Understood. I don't mean to be
15 argumentative. But I don't recall having
16 been in Kansas yesterday, and I can tell
17 you to a very high degree of certainty
18 that I wasn't. That's the kind of
19 analysis I'm asking for from you.

20 A. I appreciate that, but that's
21 also different than asking if you were in
22 Kansas five years ago.

23 Q. I know I wasn't.

24 A. Well, I have family there.

25 Q. Kansas aside, your testimony is,

1 Johnny Lan

2 so I can understand it, you don't recall
3 manipulating the browser; that's your
4 testimony today?

5 A. Right.

6 Q. Did you install the files or
7 software the first time you first gained
8 access at around 12:59 a.m.?

9 A. Again, I don't recall the exact
10 time, but, yes, if I saw that it would
11 have been part of what I needed to do what
12 I had to do.

13 Q. Have you ever undertaken an
14 exercise like this before?

15 A. No.

16 Q. Was there a reason you began the
17 download at 1:00 in the morning?

18 A. Yes.

19 Q. What was that?

20 A. It was that -- well, Mr.
21 Iacovacci refused to return the computer,
22 so, we had to download a copy of our data
23 remotely.

24 Q. You were concerned that if you
25 gained access in the middle of the day

1 Johnny Lan

2 that Mr. Iacovacci would have become aware
3 of it; is that fair?

4 MR. UNDERWOOD: Object to the
5 form of the question.

6 MR. DUMAIN: Let he withdraw it.

7 Q. Did you log into the OptiPlex
8 using Mr. Iacovacci's LogMeIn in the
9 middle of the night in an effort to avoid
10 detection by Mr. Iacovacci?

11 A. No. It wasn't to afford
12 detection, per se. It was just simply --
13 the way LogMeIn works, is it allows you to
14 operate the computer as if you were
15 sitting in front of it. So, you cannot be
16 on the machine through LogMeIn while
17 somebody else is also on it at the same
18 time trying to do whatever they want to
19 do.

20 Q. If you had tried to log in using
21 LogMeIn at the same time Mr. Iacovacci was
22 actively using the OptiPlex, what would
23 have happened?

24 A. Then, I imagine, neither of us
25 would have been able to accomplish much

1 Johnny Lan

2 what we wanted to accomplish on the
3 computer.

4 Q. Would Mr. Iacovacci have been
5 able to end the LogMeIn session?

6 A. I don't know if Mr. Iacovacci
7 would have been able to.

8 Q. Could Mr. Iacovacci have
9 disconnected the OptiPlex from the
10 internet?

11 A. I don't like hypotheticals, but
12 I don't know if Mr. Iacovacci knows how to
13 disconnect the internet.

14 Q. Could Mr. Iacovacci have ended
15 the session by turning the computer off?

16 A. Again, I can't speak to what Mr.
17 Iacovacci is capable of.

18 Q. You worked with Mr. Iacovacci
19 for many years, correct, sir?

20 A. Yes.

21 Q. In your estimation, was he able
22 of turning a computer off?

23 A. You may find this hard to
24 believe, but I'm actually not sure.

25 Q. At or around 2:37 a.m. that

1 Johnny Lan

2 evening, October 18, 2016, you again

3 logged into the OptiPlex, correct?

4 A. I don't have a specific
5 recollection of it, but I see that it is
6 in the records here.

7 Q. Why was it necessary to log in a
8 second time that evening?

9 A. I couldn't say for sure, but I
10 was probably waiting for some operation to
11 complete, some coping operation.

12 Q. Does that mean that the files
13 were running in the background between
14 12:59 a.m., or about, and 2:37 a.m.?

15 A. Sitting here today, I don't
16 recall.

17 Q. Did Mr.Koyfman assist you with
18 downloading these files?

19 A. No.

20 Q. Where did you transfer the files
21 to?

22 A. I believe, I transferred them to
23 a USB drive.

24 Q. Did you make any configuration
25 changes to Mr. Iacovacci's LogMeIn

1 Johnny Lan

2 account?

3 A. No.

4 Q. Are you certain?

5 A. Yes.

6 Q. Did you change the default
7 printer while you were operating on the
8 Dell OptiPlex using Mr. Iacovacci's
9 LogMeIn?

10 A. No. Not that I can recall.

11 Q. Did you delete any files from
12 the desktop of the OptiPlex that evening?

13 A. No, I don't believe I did.

14 Q. Did you open any files while you
15 were logged in to the OptiPlex that
16 evening?

17 A. No. I don't believe I did.

18 Q. Other than files, did you save
19 any files on the OptiPlex that evening?

20 A. I didn't explicitly create any
21 new files on the computer, but through the
22 process of creating backup transfer, I
23 couldn't tell you for sure if certain
24 files were not created at least
25 temporarily.

1 Johnny Lan

2 Q. Do you recall specifically what
3 password you used to obtain access using
4 Mr. Iacovacci's LogMeIn account?

5 A. Yes.

6 Q. What was it?

7 A. It was the password that Mr.
8 Iacovacci had provided to me over the
9 course of my helping him --

10 Q. Do you recall --

11 A. Sorry.

12 Through the course of my helping
13 him remotely on that computer.

14 Q. Do you recall where you had
15 recorded that password?

16 A. No. I do not recall.

17 Q. When Mr. Callahan approached you
18 about downloading files from Mr.
19 Iacovacci's computer, did he express any
20 concern that you might not be able to gain
21 access?

22 A. I don't recall that he did.

23 Q. Do you remember having any
24 conversation with him about how it was
25 that you would be able to gain access

1 Johnny Lan

2 through LogMeIn?

3 A. I don't recall any specific
4 conversation, but we may have talked about
5 it.

6 Q. If you hadn't been in possession
7 of Mr. Iacovacci's password as a
8 consequence of you're having worked with
9 him, would you have been able to use
10 LogMeIn to gain access to the OptiPlex?

11 MR. UNDERWOOD: Object to the
12 form of the question.

13 A. No.

14 Q. You didn't have any type of
15 administrator credentials that would have
16 been sufficient to gain access through
17 LogMeIn, correct?

18 A. Correct.

19 Q. As you were logging in, do you
20 remember having any concern that, perhaps,
21 Mr. Iacovacci might have changed the
22 password?

23 A. I'm not sure I understand you
24 because if he had changed the password how
25 would I have been able to log in?

1 Johnny Lan

2 Q. I'm asking you about that moment
3 between when you typed the password into
4 the field and when you pressed enter, did
5 you have any concern that, perhaps, it
6 wouldn't be the right password?

7 A. No. I don't recall having any
8 particular concerns about that.

9 Q. Do you recall having any plan
10 for what you would try next if Mr.
11 Iacovacci had changed the password?

12 A. I would have reported, you know,
13 I would have just reported the finding to
14 Mr. Callahan.

15 Q. When Mr. Callahan directed you
16 to gain access to the OptiPlex, did you
17 tell him that there was a chance that you
18 might not be able to because Mr. Iacovacci
19 might have changed his personal password?

20 A. No. I do not recall saying that
21 or asking that.

22 Q. In your role as head of
23 technology, did you have any compliance
24 obligations?

25 A. My understanding is that, in my

1 Johnny Lan

2 role, my job is to help compliance or
3 facilitate compliance being able to do
4 their job when it involves technology.

5 Q. Did you have any responsibility
6 for helping to draft Brevets' information
7 security handbook?

8 A. No. I don't believe I have any
9 specific responsibilities to draft a
10 handbook.

11 Q. Do you recall whether Brevet had
12 any information technology policies in
13 place before October 14, 2016?

14 A. Do you mean, like a stand-alone
15 policy?

16 Q. Stand-alone policy or
17 constituent policies?

18 A. I understood that Brevet had
19 policies related to technology within a
20 few different policies.

21 Q. Do you know when Brevet first
22 implemented a cyber security policy?

23 A. Yes.

24 Q. When was that?

25 A. Sitting here today, I cannot

1 Johnny Lan
2 remember the exact year, actually, but I
3 know it was a few years ago.

4 We can't hear you.

5 MR. UNDERWOOD: Why don't we
6 take five minutes.

7 MR. DUMAIN: Sure.

8 VIDEOGRAPHER: The time is now
9 4:49 p.m. and we're going off the
10 record.

11 (Whereupon, a recess was taken
12 at this time.)

13 VIDEOGRAPHER: The time is 5:07
14 p.m. We're back on the record.

15 Q. Good afternoon, Mr. Lan.

16 If you could take a look again
17 at Lan Exhibit 1, which is the 30(b)(6)
18 deposition notice. Specifically, if you
19 could focus on topic 21, which concerns
20 Brevets' practices, policies, and
21 procedures concerning laptops for use
22 outside of Brevets' physical offices.

23 A. Okay.

24 Q. To start, between 2014 and 2017,
25 under what circumstances did Brevet

1 Johnny Lan

2 provide or make available laptops to
3 employees outside of Brevets' physical
4 offices?

5 A. I would say it was on an as
6 needed or where it makes sense.

7 Q. Were laptops assigned to
8 specific individuals or were they loaners,
9 so to speak?

10 A. I believe, at that point, they
11 were typically assigned.

12 Well, let me rephrase. We did
13 start out originally having a pool of
14 loaner laptops, so to speak. I believe,
15 throughout that time range that you just
16 referred to, there was like a mix, so,
17 certain laptops were assigned to certain
18 people and we also had a pool.

19 Q. During that time period, between
20 2014 and 2017, were there any written
21 policies concerning the purchase, or
22 configuration, or service, or repair, or
23 setup, or maintenance, or administration
24 of these laptops?

25 A. Just to refresh the categories

1 Johnny Lan

2 that you spoke of, you said it was
3 purchase --

4 Q. I can do it one by one. I was
5 trying to save everyone's time in light of
6 the hour.

7 MR. UNDERWOOD: I'm just
8 referring him to the 30(b)(6) notice.
9 Because, I think, you just went
10 through the topics that are listed
11 there.

12 MR. DUMAIN: Yes. It's written
13 policies about any of the items in
14 21A.

15 A. Okay.

16 Sitting here today, I don't
17 recall any specific written policies
18 regarding that.

19 Q. Just so the record is clean,
20 your testimony is that you do not recall
21 any written policies about the items
22 listed in 21A of the 30(b)(6) notice for
23 the period of 2014 to 2017, correct?

24 A. Yes.

25 Q. Earlier today you testified

1 Johnny Lan

2 about the practices, Brevets' practices,
3 as it related to computers that were
4 available for use in Brevets' physical
5 offices; do you remember giving that
6 testimony?

7 A. Right.

8 Computers that were just located
9 in the offices?

10 Q. Correct.

11 A. Yes.

12 Q. Were Brevets' practices for the
13 purchase, or configuration, or service, or
14 repair, setup, maintenance, or
15 administration of laptop computers for use
16 outside of the office any different
17 between 2014 and 2017 than Brevets'
18 policies for the purchase, configuration,
19 service, repair, setup, maintenance, or
20 administration of the work stations at
21 Brevets' physical offices during that time
22 period?

23 A. Yes, there may have been some
24 difference.

25 Q. How were Brevets' practices with

1 Johnny Lan

2 respect to the laptop computers different
3 than its practices with respect to the
4 work stations at Brevets' offices between
5 2014 and 2017?

6 A. I'll try not to get too
7 technical, but as an example, one primary
8 difference is that the desktop computers
9 located in the office were generally
10 joined so to speak to a domain controller
11 server that was physically present in the
12 Brevet office. Whereas, the computers
13 that were deployed outside of the office
14 were not.

15 Q. For purposes of topic 21, is it
16 fair to say that the laptops and the work
17 stations were configured differently
18 because the laptops were not always
19 connected directly to Brevets' network?

20 A. Yes. The distinguishing factor
21 was more whether the computer was usually
22 located outside of the office or not, not
23 whether it was a laptop or desktop.

24 Q. From a configuration
25 perspective, what was the difference

1 Johnny Lan

2 between computers that were located
3 primarily outside the office and those
4 that were located primarily within the
5 office?

6 A. As I just stated, the computers
7 located on the premises in the office were
8 joined to a corporate -- what's called a
9 domain, whereas, the computers outside of
10 the offices were not.

11 Q. If you could look at -- before
12 we get there.

13 Was that the only distinguishing
14 factor as it related to laptops or other
15 computers that were outside the office
16 compared to computers that could be found
17 within the office?

18 MR. UNDERWOOD: Object to the
19 form of the question.

20 A. Sitting here today, just off the
21 top of my head, that's the primary
22 difference that comes to mind. I can't
23 tell you for sure if there are others.

24 I couldn't tell you for sure if
25 there were others. I'm just not recalling

1 Johnny Lan

2 at the moment.

3 Q. Look at topic 25 which begins at
4 the bottom of page 12.

5 Did Brevet have any written
6 policies governing remote access to its
7 network?

8 A. Do you mean written policies
9 that specifically relate to this remote
10 access to Brevets' network or just in
11 general to Brevets' network?

12 Q. The former.

13 Did Brevet have any written
14 policies relating specifically to remote
15 access to its network?

16 A. Towards remote -- to the remote
17 access -- (inaudible)

18 No. I do not recall any
19 specific written policies that relate to
20 this particular item.

21 Q. What was the functional
22 difference between GoToMyPC and LogMeIn?

23 A. They function quite similarly.

24 Q. Do they work in the same
25 direction?

1 Johnny Lan

2 MR. UNDERWOOD: Object to the
3 form of the question.

4 Q. Sure.

5 GoToMyPC permits a user to
6 access its network computer from outside
7 the network; is that correct?

8 A. GoToMyPC allows -- the answer is
9 not exactly.

10 GoToMyPC like LogMeIn allows you
11 to access a remote computer from another
12 computer. It doesn't really have anything
13 to do with whether you're outside or
14 inside the network.

15 Q. Does LogMeIn operate the same
16 way?

17 A. Yes.

18 Q. Scroll up to topic 24, please.

19 A. Okay.

20 Q. As of today, does Brevet place
21 any insignia or markings on the outside of
22 computers that it owns?

23 A. Yes.

24 Q. When did it start doing that?

25 A. Sitting here today, I could not

1 Johnny Lan

2 tell you the exact -- I don't recall the
3 exact time we started doing that, but a
4 few years ago.

5 Q. Why did Brevet start doing that?

6 A. Well, for multiple reasons. As
7 the firm grew, we had more devices to keep
8 track of. So, we placed these barcodes on
9 the devices. Frankly, so that there will
10 never be another instance of an employee
11 being confused as to who owns the
12 computer.

13 Q. That began, as you said, after
14 Mr. Iacovacci left the firm?

15 A. Yes.

16 Q. You said Brevet now assigns user
17 barcodes to assign identifiers to
18 equipment it owns; is that correct?

19 A. Could you repeat that last
20 sentence?

21 Q. Sure.

22 What's the purpose of barcodes?

23 A. They uniquely identify the
24 device.

25 Q. Before Brevet started using

1 Johnny Lan

2 barcodes to uniquely identify the device,
3 did it maintain any kind of log or
4 inventory of computers or other devices
5 that it owned?

6 A. Yes.

7 Q. Who maintained that list?

8 A. The list was, essentially,
9 posted on the Dell website and it
10 contained a list of devices that Brevet
11 had purchased from Dell.

12 Q. The list of items that Brevet
13 had purchased, when an employee of Brevet
14 turns on his or her work station today in
15 2021, do any disclaimers, or waivers, or
16 log-in matters appear?

17 A. There are no waivers or
18 disclaimers. There is a log-in prompt.
19 I'm not sure what you mean by log on
20 banner.

21 Q. Is there any Brevet logo?

22 A. No.

23 MR. DUMAIN: We should probably
24 take 10 minutes to just clean up
25 whatever we have left, then, we can

1 Johnny Lan

2 probably wrap up pretty quickly.

3 MR. UNDERWOOD: Okay.

4 VIDEOGRAPHER: The time is 5:26
5 p.m. and we're going off the record.

6 (Discussion held off the
7 record.)

8 VIDEOGRAPHER: The time is 5:32
9 p.m. We're back on the record.

10 Q. Hi, Mr. Lan.

11 Earlier today you referenced an
12 e-mail archive that's used by Brevets'
13 compliance and senior management personnel
14 to monitor e-mails; do you recall,
15 generally, that testimony?

16 A. Yes.

17 Q. Were you referring to a Global
18 Relay archive?

19 A. Yes.

20 Q. What is a Global Relay archive?

21 A. Global Relay is the name of the
22 vendor. They run a compliance archives
23 solution that captures e-mails sent and
24 received through the Brevet e-mail system.

25 Q. It captures all e-mails sent and

1 Johnny Lan

2 received, correct?

3 A. Yes.

4 Q. Is that, insofar as you know,
5 without regard to any particular
6 regulatory obligation?

7 MR. UNDERWOOD: Object to the
8 form of the question.

9 MR. DUMAIN: Let me state it in
10 a different way.

11 Q. Do you know whether Brevet is
12 obligated by law to retain every incoming
13 and outgoing e-mail that passes through
14 its system?

15 A. My understanding is that the
16 regulatory bodies to which Brevet is
17 subject, it requires Brevet to capture
18 certain e-mails.

19 Q. Do you know with any greater
20 specificity the particular categories of
21 e-mails that Brevet is required to keep
22 pursuant to those regulations?

23 A. No, I don't.

24 Q. Do you recall testifying about
25 what you characterized as a bring your own

1 Johnny Lan

2 device practice that existed for a time at
3 Brevet?

4 A. Yes.

5 Q. What types of devices did the
6 bring your own device practice apply to?

7 A. Bring your own device,
8 generally, applies to mobile devices.

9 Q. Did that include iPads?

10 A. Yes.

11 Q. And phones?

12 A. Yes.

13 Q. How about personal laptops?

14 A. Yes.

15 While, I believe -- generally --
16 when people say bring your own device, it
17 usually refers to mobile devices, yes. I
18 do believe personal laptops would
19 certainly fall under that category as
20 well.

21 Q. Earlier today you testified
22 about configuring computers for use at
23 home by certain Brevet employees; do you
24 recall that, generally?

25 A. Yes.

1 Johnny Lan

2 Q. Do you recall creating family
3 accounts for any of those employees, other
4 than Mr. Iacovacci and Mr. Callahan?

5 A. Sitting here today, I just
6 recall that that was my practice. I
7 cannot recall any other specific instances
8 at this moment.

9 Q. Is Mr. Iacovacci the only Brevet
10 employee for whom you had a record of
11 their LogMeIn password at any time?

12 A. Sitting here today, I cannot
13 recall if he was the only one.

14 Q. Was it your general practice to
15 seek permission from a Brevet employee
16 before gaining access to that employees'
17 PC through LogMeIn?

18 A. I generally don't -- I disagree
19 with the characterization of that. I
20 don't see it as seeking permission, more
21 as I would log in at the employees'
22 request for help.

23 Q. Are you done with your answer?

24 A. Yes.

25 Q. Aside from the events of Mr.

1 Johnny Lan

2 Iacovacci that we had discussed today, do
3 you have any memory of ever using LogMeIn
4 to log in into another Brevet employees'
5 PC without notice to them?

6 A. While I cannot, sitting here
7 today, recall specific occurrences, I do
8 believe I have done that in the past.

9 Q. When you logged into Mr.
10 Iacovacci's computer on October 18, 2016
11 using his password, you didn't understand
12 him to have consented to that access by
13 virtue of his having shared his password
14 with you in the past, did you?

15 MR. UNDERWOOD: Object to the
16 form of the question.

17 A. As I stated before, I do not
18 view these company issued computers as
19 requiring permission or consent from the
20 user for me to remote in and perform IT
21 duties.

22 Q. Whether or not you thought you
23 needed consent, did you understand Mr.
24 Iacovacci to have given his consent?

25 MR. UNDERWOOD: Object to the

1 Johnny Lan

2 form of the question.

3 A. I can't speak to Mr.
4 Iacovacci's -- what he was thinking.

5 Q. If you look at Exhibit 14, which
6 was the e-mail exchange concerning the
7 download of Mr. Iacovacci's contacts for
8 Mr. Callahan, you'll see that a person
9 named Nicholas was included on that e-mail
10 chain.

11 Do you know who Nicholas was?

12 A. Can you pinpoint the location?
13 I don't believe I see that on
14 the screen.

15 Q. There's a reference in that
16 e-mail toward the bottom of the page
17 ending in Bates number 16. "There's no
18 automated export when sub folders are
19 involved so Nicholas helped piece this
20 together manually."

21 A. So, going back, can you repeat
22 the question?

23 Q. Who is Nicholas?

24 A. He was an employee at Brevet.

25 Q. What was his job function?

1 Johnny Lan

2 A. I believe, he was an analyst.

3 Q. Do you recall his last name?

4 A. Yes.

5 Q. What is it?

6 A. Flemming.

7 Q. Does Nicholas Flemming still
8 work at Brevet?

9 A. Klemming, with a K.

10 Q. Does Nicholas Klemming still
11 work at Brevet?

12 A. No.

13 Q. Do you know where he works
14 today?

15 A. No.

16 Q. Are you familiar with the term
17 persistent VPN?

18 A. Not off the top of my head.

19 Q. So, you don't know whether the
20 Callahan laptop from 2016 has a persistent
21 VPN?

22 A. Yeah, I'm not sure what that
23 term means in this context.

24 Q. Are you familiar with LogMeIn
25 logs?

1 Johnny Lan

2 A. Yes.

3 Q. What is a LogMeIn log?

4 A. I believe, they are logs that
5 the LogMeIn program produces.

6 Q. Does it capture the IP address
7 from the accessing computer?

8 A. I just generally know what
9 LogMeIn logs are. I'm not familiar with
10 the details of what they capture or not.

11 Q. When you were downloading files
12 on October 18, 2016 from the OptiPlex, you
13 downloaded the files onto a USB drive,
14 correct?

15 A. Yes.

16 Q. What computer was that USB drive
17 plugged into at the time you were
18 downloading the files?

19 A. I believe, it was a computer I
20 had at home.

21 Q. Was it a Brevet owned computer?

22 A. I don't believe so.

23 Q. Were you connected to the Brevet
24 network through GoToMyPC?

25 A. Sitting here today, I do not

1 Johnny Lan

2 recall the exact software I used to

3 connect to the Brevet network.

4 Q. Were you connected to the Brevet
5 network at the time you accessed the
6 OptiPlex on October 18, 2016?

7 A. I believe so.

8 Q. Would you have needed to be
9 connected to the Brevet network to access
10 the OptiPlex through LogMeIn?

11 A. I'm not sure.

12 MR. DUMAIN: Those are all the
13 questions I have this afternoon,
14 subject to any redirect from Mr.
15 Underwood.

16 MR. UNDERWOOD: I don't have any
17 questions at this time.

18 MR. DUMAIN: Thank you for your
19 time today, Mr. Lan.

20 THE WITNESS: Thank you.

21 MR. UNDERWOOD: Thank you, Ian.

22 VIDEOGRAPHER: The time is 5:51
23 p.m. We're going off the record.

24 (TIME NOTED: 5:51 P.M.)

25

Johnny Lan

A C K N O W L E D G E M E N T

STATE OF NEW YORK)

: ss

COUNTY OF NEW YORK)

I, JOHNNY LAN, hereby certify that I
have read the transcript of my testimony
taken under oath on October 1, 2021, that
the transcript is a true, complete and
correct record of what was asked, answered
and said during my testimony under oath,
and that the answers on the record as
given by me are true and correct.

JOHNNY LAN

Signed and subscribed to
before me, this ____ day
of _____, _____.

Notary Public

I N D E X

WITNESS	EXAMINATION BY	PAGE
Johnny Lan	Mr. Dumain	15

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C E R T I F I C A T E

I, TRACIE SHAND, a shorthand
reporter and Notary Public within and
for the State of New York, do hereby
certify:

That the witness(es) whose
testimony is hereinbefore set forth
was duly sworn by me, and the
foregoing transcript is a true record
of the testimony given by such
witness(es).

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that
I am in no way interested in the
outcome of this matter.



TRACIE SHAND

ERRATA SHEET

CASE NAME: _____

DATE OF DEPOSITION: _____

NAME OF WITNESS: _____

PAGE LINE

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_____ CHANGE: _____
 _____ REASON: _____

WITNESS SIGNATURE

Signed and subscribed to
 before me, this _____ day
 of _____, _____.

Notary Public

My Commission Expires _____

[& - 2018]

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